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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in the Republic of Equatorial Guinea submitted by the Special Representative of the Commission, Mr. Gustavo Gallón, pursuant to Commission resolution 1999/19

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EXECUTIVE SUMMARY

Mr. Gustavo Gallon (Colombia) was appointed as Special Representative of the Commission on Human Rights for Equatorial Guinea in August 1999, and entrusted with the mandate of monitoring the situation in the country and submitting a report, including recommendations on the implementation of the technical assistance programme. He made his first visit to the country from 7 to 21 November 1999.

Equatorial Guinea gained independence from Spain in 1968 and the President elected that year established a dictatorship until he was overthrown in 1979 by the current President of the Republic. Deep-seated intolerance of dissent has characterized the exercise of power throughout the country's history, as reflected in the absence of a written press, restrictions on the organization of political parties, non-governmental organizations and trade unions, restriction of freedom of movement, and internal exile, arbitrary detention and torture. All of this is taking place in circumstances where 65 per cent of the population lives in extreme poverty, there is marked discrimination against women, and enjoyment of the rights to health and education is extremely precarious, especially for children.

The serious situation which the Special Representative found in the country has been studied in detail and brought to the Commission's attention by the former Special Rapporteurs and the Independent Expert appointed by the Commission every year without interruption since 1979. Their repeated and concurrent substantive observations and recommendations continue to be valid because, in most cases, no action has been taken on them. Account must nevertheless be taken of the progress made through Equatorial Guinea's accession to some international human rights conventions and its acceptance, since 1992, of the legal existence of political parties other than the governing party, as a result of which parliamentary, municipal and presidential elections have been held. Also worthy of note are the amnesties, programmes for persons returning from exile and design of institutions based on democratic ideas, such as the Constitutional Court, and the understandings reached between the governing party and the opposition parties in 1993 and 1997. These worthwhile achievements have, however, not basically changed the systematic practice in Equatorial Guinea of human rights violations protected by impunity.

The practice of committing such violations is possible because there is no sustained rule of law; rather, power is concentrated in the hands of the executive, with the support of a government party which controls employment in Government and private enterprise. The executive is also reinforced by the dominance of the military, which is no different from the police and even exercises jurisdiction over civilians.

Equatorial Guinea is a country composed of four separate territories and five indigenous ethnic groups, and this may give rise to serious conflicts in the future. However, its advantages are that its people are generally peaceful, its small size makes it easy to govern, its small population makes for the adequate distribution of resources and enormous sources of wealth have been discovered in the past few years as a result of oil exploration and development. Unless these favourable elements are taken advantage of soon in order fully to guarantee respect

for civil, political, economic, social and cultural rights, the situation in Equatorial Guinea may not only continue to reveal a consistent pattern of violations, but may also become worse, and possibly uncontrollable.

The Government and representatives of the international community told the Special Representative that they were interested in supporting the country as it moves towards democracy, respect for human rights and an improvement in living standards. Technical assistance may be useful for this purpose, provided that it is preceded by the adoption of a specific programme. The first step in such a programme would be the adoption of recommendations which do not require technical assistance for their implementation, and whi have been formulated time and again over the past 20 years. These recommendations include order putting an end to arbitrary arrest and torture, the authorization of freedom of expression and freedom of the press, the elimination of permits to leave the country, the removal of milita roadblocks inside the country, the periodic publication of legislation, the ratification of the international instruments which Equatorial Guinea has not yet accepted (such as the Conventi against Torture and the Convention on the Elimination of Racial Discrimination), and a decisi to deal with impunity for human rights violations.

Once these and other similar recommendations have been implemented, the Governme might agree with the international community on a timetable and a description of the cooperat activities it needs to give effect to the remaining recommendations through technical assistanc These recommendations relate, inter alia, to the independence of the judiciary, the codification laws, the elimination of discrimination against women, political pluralism, and the satisfaction basic food, adequate housing, health, education and employment needs. Such an agreement, which would be based on Commission on Human Rights recommendations and decisions, mus be implemented by the United Nations system as a whole, in coordination with and under the supervision of the Commission, through its Special Representative or some other similar procedure. It would be desirable for interested Governments to coordinate their human rights assistance activities on the basis of the adoption and implementation of such a plan. The Commission should make an appeal along the same lines to the multinational corporations working in Equatorial Guinea.

For all the above reasons, the Special Representative recommends that the Commission on Human Rights should continue to monitor the situation of human rights in Equatorial Guine and give it even greater attention in order to bring about the prompt implementation of the recommendations that have repeatedly been made to that country for over 20 years. In addition to renewing the Special Representative's mandate, it should request him to contribute to an agreement on, and the coordination and monitoring of, a programme of human rights cooperati with the Government of Equatorial Guinea for the benefit of the population, in order to ensure that the efforts the Commission has been making there for over two decades become more productive and to prevent the outbreak of wider conflicts affecting the international community as a whole.

INTRODUCTION

1 Equatorial Guinea has been under public scrutiny by the Commission on Human Rights since 1979, the year when the Commission ended the confidential investigation it had been carrying out since 1976 under the procedure provided for in Economic and Social Council resolution 1503 (XLVIII) and decided, in its resolution 15 (XXXV), to consider the question in accordance with the public procedure provided for in Council resolution 1235 (XLII). It therefore decided to request a special rapporteur of the Commission, to be appointed by the Chairman of the Commission, to make a thorough study of the human rights situation in Equatorial Guinea. Mr. Fernando Volio Jiménez (Costa Rica) was appointed. From 1980 until 1992, Mr. Volio's mandate as Independent Expert was renewed each year by the Commission with a view to assisting the Government of Equatorial Guinea in taking the action necessary for the full restoration of human rights and fundamental freedoms, keeping in mind the recommendations he had made as Special Rapporteur. In his last annual report, submitted to the Commission in 1993, Mr. Volio pointed out that "There has been no change in the human rights situation in Equatorial Guinea" and that "The political and institutional conditions that seriously hinder both the free exercise and due legal protection of fundamental rights persist" (E/CN.4/1993/48, para. 23).

2 In accordance with the Commission's decision, its Chairman appointed Mr. Alejandro Artucio Rodríguez (Uruguay) as the new Special Rapporteur in 1993 and he submitted annual reports to the Commission for six years. In his last report, submitted at the fifty-fifth session in 1999, the Special Rapporteur confirmed the conviction he had "expressed in his earlier reports regarding the precarious nature of the progress achieved in the observance of human rights and fundamental freedoms. Accordingly, he advised the Commission not to relax its monitoring of the situation, as any crisis might mean an immediate regression, depriving the population of all legal protection, and pose the risk of a return to practices that violate human rights, especially torture of detainees, arbitrary detention and limitations on the parties' political action" (E/CN.4/1999/41, para. 10). In resolution 1999/19 of 23 April 1999, the Commission decided to continue to keep the human rights situation in Equatorial Guinea under review through a special representative entrusted with the task of monitoring the situation in order to submit to the Commission a report which would also include recommendations on the implementation of the programme of technical assistance for the country.

3 Also at its fifty-fifth session in 1999, the Commission decided to limit the mandate of its special rapporteurs to no more than six years and the Chairperson appointed Mr. Gustavo Gallón Giraldo (Colombia) as the new Special Representative for Equatorial Guinea in August 1999. The mandate of the new Special Representative does not differ substantially from that entrusted to the former Special Rapporteur, except that it has been bolstered, since he was requested to again monitor the human rights situation and, in addition, to formulate recommendations to the Commission on the technical assistance that might be provided to the country. The change of name nevertheless confused the people of Equatorial Guinea because the local media, which are government-controlled, implied that the new title of representative of the Commission reflected its recognition of the Government's good human rights record.

4 Following his appointment in August, the new Special Representative agreed with the Government of Equatorial Guinea that he would visit the country from 7 to 21 November 1999. He travelled with a human rights consultant provided by UNDP, Mr. Carlos Rodriguez Mejia, and a staff member of the Office of the United Nations High Commissioner for Human Rights. Their professionalism and painstaking dedication were key factors in ensuring that the mission went well. Following an initial one-week stay in the capital, Malabo (on the island of Bioko), they went to the mainland region of Rio Muni for five days and then ended the mission three days later in Malabo. They had meetings in those places with many representatives of the Government, private individuals, diplomats and United Nations officials. In the mainland city of Bata, they were received by the President of the Republic, His Excellency Obiang Nguema Mbasogo, with whom the Special Representative had a frank and open discussion about the main aspects of the human rights situation.

5 Owing to limited space and concern about the security of some of the persons who spoke with the Special Representative (whom he thanks and remembers individually), much of the information received and many of the names of the persons interviewed have been omitted from this report.

6 The Special Representative was received by the following representatives of the Government in Malabo: the Prime Minister, the Minister for Foreign Affairs and International Cooperation, the Minister of the Interior and Local Communities and Second Deputy Prime Minister, the Minister of Justice and Worship, the Minister for Social Affairs and the Status of Women, and the Deputy Minister for National Security. He also held meetings with the President of the House of Representatives of the People, the members of the National Human Rights Commission of Equatorial Guinea, the President of the Supreme Court and the President of the Constitutional Court.

7 In the mainland region of Rio Muni, he met with the representative of the Ministry of Foreign Affairs, the Governor and the Regional Representative of the Ministry of Information, Culture and Tourism, and with the national security authorities. He also travelled inland to meet with the peripheral authorities in Niefang and Añisok.

8 The Special Representative regrets that he did not have the opportunity to meet with other senior government officials. He thanks the authorities for the support he received during his visit, but would urge them to set the agenda for a future visit in advance. This was requested with sufficient notice, but without success. He would also draw attention to the lack of cooperation by some government officials in Bata who were responsible for facilitating contacts with the peripheral authorities.

9 The Special Representative was able to meet with diplomatic representatives, including the Ambassadors of Cameroon, France, Gabon, Morocco and Spain, the representative of the European Commission and the representatives of the United Nations agencies working in the country: WHO, FAO and UNICEF. He was also in constant contact with the UNDP Resident Representative in Equatorial Guinea, Ms. Sylvie Kinigi; he is grateful to her and her colleagues for their invaluable support and kindness, without which the mission could not have taken place.

10. The Special Representative visited the public prisons in Malabo and Bata, and the police stations in both cities. He wishes to express his appreciation to the authorities in charge of the detention centres for having allowed him to speak freely and in private with any inmates he wished. However, he regrets that he was not allowed access to the Bata gendarmeria. He also regrets that two inmates at Bata police station were not allowed to meet him.

I. BACKGROUND

11. Equatorial Guinea has a surface area of 28,000 km^2 and a population of approximately 450,000 inhabitants (51.2 per cent women and 48.8 per cent men) belonging to five indigenous ethnic groups - Fang, Bubi, Ndowe, Bisio and Annobonese - as well as other residents. The Fang ethnic group is by far the largest. Although the Bubi account for only a minority of the total population, they make up the majority of the inhabitants of the island of Bioko, where the capital, Malabo, is located.

12. Equatorial Guinea, a territory of conquest, slavery and colonization since 1471, acceded in 1963 to a regime of autonomy within the Spanish State, which led to full independence in 1968. Until then, there had been little development of human resources, democratic institutions and local wealth, even though Equatorial Guinea was the world's leading producer of cacao.

13. A great many internal divisions have hampered political understanding among Equatorial Guineans for years. In addition to ideological preferences and the personal aspirations characteristic of any power struggle, such understanding is hindered by the problems of coexistence faced by five different ethnic groups in a territory without spatial unity, with one part located on the mainland and the three others in completely separate island groups. In the midst of such divisions, Fernando Macias was elected President in 1968; his regime became an arbitrary dictatorship and he was overthrown in 1979 by the current President of the Republic, Obiang Nguema Mbasogo, who was then a lieutenant-colonel and Minister of Defence.

14. Since then, various institutional adjustments have been made, some of which have had the establishment of democratic institutions as their reference point or aim, although, according to the former Special Rapporteur, "there remains some way to go before democracy and the rule of law are finally achieved" (E/CN.4/1998/73, para. 71). A new constitution was adopted in 1981 and this in turn was amended by another, which was submitted to a referendum in November 1991. The latter was harshly criticized by the then Independent Expert of the Commission on Human Rights because, inter alia, it gave the Head of State absolute immunity "before, during and after his mandate" (E/CN.4/1992/51, para. 111). That provision was amended in 1995 by Constitutional Act No. 1 of 17 January 1995, which states that "The law shall govern the privileges and immunities of Heads of State after their mandate".

15. In 1987, the President of the Republic founded the Partido Democratico de Guinea Ecuatorial (PDGE), which was the only legally recognized party for over five years. In January 1992, a law was enacted allowing for the formation of other parties and, in March 1993, they and the Government concluded a "National Pact" in which the Government undertook to adopt measures to guarantee political pluralism and respect for human rights. A few months later, however, the Supervisory and Monitoring Commission for the Pact, which had been

established with the participation of the parties, was dissolved because the parties considered th they lacked guarantees for the parliamentary elections held on 21 November 1993

16 A new electoral act under which municipal elections were held was adopted in 1995 The opposition won 33 per cent of the total number of municipalities, i e nine town councils, including that of the capital, Malabo Presidential elections from which the only candidate of th Joint Opposition Platform was banned and in which the incumbent President won 99 per cent of the votes were held one year later on 25 February 1996 In April 1997, the Government and the political parties concluded a new agreement, known as the "Document on the Evaluation of the National Pact and Legislative Agreements", which revived the National Pact and aroused great expectations As part of the evaluation, decrees providing for the establishment of various specialized commissions to agree on democratic guarantees for the various political forces were issued that year They still have not come into being

17 There is no armed conflict in Equatorial Guinea From time to time, there have been acts of violence against the Government, but there is no standing armed rebel group The most recent act of this kind was the attack carried out on 21 January 1998 by members of the Bubi ethnic group against soldiers and police, two of whom were killed and genitally mutilated, this led to deep-seated revulsion Another soldier and three civilians also lost their lives as a result of the attack A court martial found about 100 persons criminally responsible for the attacks (E/CN 4/1998/73/Add 1) Two years previously, in 1996, the leader of a different organization, the Progress Party, and some of his associates were convicted of trying to organize an armed expedition by sea from Angola in order to carry out a coup d'etat On the island of Annobon (500 km by sea from the capital, with a population of about 1,000), the persons responsible for a riot against the authorities were found guilty in 1992 An attempted coup d'etat for which various persons were convicted was foiled in 1988 The Government is, of course, exposed to attacks on the security of the State which may be the work of various social sectors, but so far they have been disjointed, disorganized, unsystematic and ineffective In Equatorial Guinea, the Special Representative did not learn of any plans or action aimed at the organization of an armed struggle or violent insurrection

II SITUATION OF CIVIL AND POLITICAL RIGHTS

A Right to vote and to be elected

18 The parliamentary elections originally scheduled for November 1998 were held on 7 March 1999 According to the Government's official results (which the Special Representative was unable to study in detail), the governing party, the PDGE, won 75 of the 80 seats which make up the Parliament, while the opposition won only 5 seats 4 were won by the Union Popular (UP) party and 1 by Convergenica para la Democracia Social (CPDS) Before these elections the opposition had held 12 seats The two above-mentioned opposition parties considered the result of the election to be fraudulent and decided, in protest, not to enter the new Parliament However, two UP representatives, defying their party, took their seats and were subsequently expelled from the party

19. The Special Representative was informed that the election had gone off relatively quietly, without major incidents. However, he also received reports of many irregularities and cases of harassment of the opposition. These reports may be summarized as follows:

(a) The various commissions established under the above-mentioned agreements of 1993 and 1997, although set up by presidential decree, were unable to meet or work normally, leaving the opposition unable to participate in the electoral process;

(b) The agreement on the legalization of all parties which had applied for recognition was not complied with;

(c) The continued presence of roadblocks manned by soldiers all over the country, despite the agreements to the contrary, prevented the normal conduct of the opposition parties' election campaign;

(d) Contrary to the agreements of 1993 and 1997, opposition activists were occasionally arrested for short periods. The Special Representative was able to meet with members of the opposition who had been subjected to ill-treatment or torture and arbitrary detention for a few days, after which they had been released without charge or explanation. Mr. Antimo Oyono Mba and Mr. Joaquin Mbana Nchama, both leading members of the UP party, were detained at Bata police station during the night of 1 March, after a PDGE group had disrupted a party meeting in which they were taking part. Like many other persons interviewed by the Special Representative in other places, they were tortured by having their feet severely beaten;

(e) The detention of opposition activists was occasionally accompanied by the imposition of substantial fines, established arbitrarily by the governmental authorities;

(f) There were irregularities in the compilation of the electoral rolls, such as the inclusion of minors, deceased persons or persons not resident in the country, and the exclusion of names of opponents of the regime;

(g) In some places, especially in the most remote areas, the ballot was reported to have been public. During the electoral campaign, the PDGE itself had called on its supporters to cast their vote publicly. Electors had had to choose the ballot papers within the sight of polling officers or only found ballot papers enabling them to vote for the governing party;

(h) Opposition party observers were obliged to leave several polling stations at the time of the vote. The Special Representative was informed that Milagrosa Obono Ndong, electoral representative of the CPDS opposition party in Acurenam, was arrested by Luis Oyono, Governor of Centra Sul, on 6 March 1999 to prevent her from participating in the vote and, while under arrest, she was raped by José Luis Abaga Nguema, Evinayong district judge;

(i) Soldiers behaving in an intimidating manner were present near polling stations, according to numerous consistent witnesses;

(j) Several people were dismissed from their jobs for political reasons, both in the State administration and in the private sector.

20. For its part, the Government of Equatorial Guinea considers that the country is currently at a stage where democracy is being consolidated and that the period of transition to democracy is over. In its opinion, the overwhelming victory of the governing party demonstrates the weakness of the opposition, which does not have a valid political agenda. The Government assumes that the proper conduct of the election has been confirmed through the presence of international observers. Nevertheless, representatives of the international community accredited in Equatorial Guinea, and also members of the delegations who attended as international observers, agreed that the elections lacked transparency.

21. During his visit, the Special Representative was informed of an agreement concluded on 21 October 1999 between the Government and the political parties, whereby it was decided to postpone until the first quarter of 2000 the municipal elections which were to have been held at the end of 1999.

22. The Progress Party (PP) was declared illegal under a criminal sentence imposed on its leader in 1997, he was found guilty of having attempted, in Angola, to prepare a coup d'etat in Equatorial Guinea in 1996, as has already been stated. As an accessory penalty, and although the PP was not a party to the trial, the court ordered it to be banned. The PP is still awaiting a response to its appeal against that decision. The Special Representative, like his predecessor the Special Rapporteur, would appreciate it if the authorities would consider the appeal lodged by the PP, absolving it of responsibility for acts perpetrated by its leader in a personal capacity.

23. The Fuerza Democrata Republicana (FDR) party, which has not yet been legalized, has been awaiting recognition since 1995. Leaders of this party are currently imprisoned in Malabo and Bata. The Special Representative regrets that the competent authorities have not yet considered the party's application for recognition, despite the fact that provision was made for this in the agreements of April 1997.

24. Another party whose application for legalization has not been dealt with by the authorities is the Independent Democratic and Social Party (PIDS), headed by the lawyer Jose Olo Obono.

25. Also considered illegal are the activities of the organization claiming to represent the interests of the Bubi ethnic group, the Movement for the Self-Determination of the Island of Bioko (MAIB), since electoral legislation bans political parties of an ethnic character.

B. Rights to equality and self-determination (racial discrimination)

26. As has been repeatedly stated in the reports of the preceding Special Rapporteur, members of the Bubi ethnic group continue to be subjected to discrimination by the Fang majority, which holds power. Various forms of harassment against the Bubi are a daily occurrence, especially whenever they try to pass any of the numerous military roadblocks which exist on the island. One of the most frequent complaints is the shortage of local agricultural produce in Malabo market since the Bubi are not allowed to travel there to sell their produce.

27. In the opinion of some government representatives, discrimination is not a problem in Equatorial Guinea, and for this reason the Government does not consider it necessary to ratify the International Convention on the Elimination of All Forms of Racial Discrimination. This argument, instead of justifying the country's unwillingness to accede to the Convention, would appear to be a reason for Equatorial Guinea to extend its cooperation to the international community in action to combat racism, especially in the year 2000, which is devoted to this issue. Consequently, the Special Representative deems it appropriate to reiterate the recommendation made by his distinguished predecessors that it should ratify the Convention as soon as possible.

28. According to members of the Government, the MAIB does not exist; it is simply an invention of foreign interests and accordingly must not be legalized. However, the Special Representative was able to interview members of this ethnic group and noted the existence of discrimination against the Bubi population, who support or sympathize with the MAIB. The situation has grown even tenser since the events of 21 January 1998 when, as already stated, members of the Bubi ethnic group launched attacks which killed three soldiers and three civilians. Although the Special Representative shares the Government's indignation at the seriousness of these events, it must bear in mind that the right to self-determination does not imply disregard of a State's right to unity and sovereignty, as has been duly clarified by the Committee on the Elimination of Racial Discrimination (general recommendation XXI [48] adopted in 1996 and published in the Official Records of the General Assembly, A/51/18, annex VIII, B). Consequently, the Special Representative respectfully reiterates the invitation to the authorities of Equatorial Guinea to appropriately recognize this right and prevent the occurrence of a major conflict, as suggested by the preceding Special Rapporteur (in his report E/CN.4/1997/54, para. 61).

C. Right of association (and protection of human rights defenders)

29. Act No. 1 of 1999, establishing regulations relating to non-governmental organizations, does not include, within the activities which they may undertake, that of safeguarding and promoting human rights. Some people accordingly consider that any organization engaging in this activity may be considered illegal. This is contrary to the Vienna Declaration and Programme of Action, as already noted by the preceding Special Rapporteur (E/CN.4/1996/67, para. 50), and to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly (resolution 53/144 of 9 December 1998). Consequently, although the Act does not set forth the defence of human rights as an activity peculiar to non-governmental organizations, the Special Representative urges the authorities to permit activities in this field by anyone wishing to engage in them and to rectify the omission from the Act as soon as possible.

30. The Act's related regulations are excessive and casuistic. The Special Representative recommends that, in applying them, account should be taken of the primacy of the right of association, which is recognized both in article 13 (k) of the Constitution of Equatorial Guinea and in article 22 of the International Covenant on Civil and Political Rights. In future, special

care must be taken to ascertain whether their application tends to restrict the effective enjoyment of the right of association and, if it does, a reform properly guaranteeing this right must be undertaken.

31. There are no trade unions in Equatorial Guinea. On 1 October 1992, Act No. 12/1992 was adopted to regulate union activity, but there are no reports of it having entered into force (see para. 84).

D. Freedom of the press and right to information

32. Except for a few limited and sporadic publications, there is no daily, weekly or fortnightly press organ in Equatorial Guinea. The normal information media are the radio and television, which are controlled by the Government; they operate more as propaganda tools than information carriers, and exclude participation by opponents or dissidents.

33. The Special Representative saw the following publications on sale: La Gaceta, the periodical AYO, and El Ébano, the official organ of the Ministry of Information, Tourism and Culture. He had no news of three newspapers which had applied for authorization to publish some years before: El Tiempo (since July 1996), La Hoja del Periodista (March 1998) and La Opinión (April 1998). None of the existing publications appears with any regularity, although La Gaceta endeavours to publish every month. There are also some information bulletins published by political parties: "La Voz del Pueblo" (governing PDGE party) and "La Verdad" (CPDS party). Regular news about Equatorial Guinea is broadcast via Radio Exterior de España, a fact which is a constant source of irritation to the authorities.

34. In another section of this report (paras. 54 and 55) information is given on the case of two people who were arrested on 9 November 1999 for possession of an article published on the Internet referring to the health of the President of the Republic. At the time of writing this report (mid-December 1999) these people were still being held. Their situation is indicative of a disturbing disregard of the right to information and freedom of opinion in Equatorial Guinea.

35. The Special Representative received reliable reports that priests are not allowed to refer in their sermons to any subject that may be considered prejudicial to the interests of the State.

36. There is a Boletín Oficial del Estado (official gazette) which occasionally publishes the text of laws, but not all laws and not systematically or periodically. Parliament does not have its own publication, with the result that bills are not published. Moreover, the authorities consider that some bills (such as the budget) should not be published and that the public only have a right to learn about them in detail once they have become law. Similarly, the judicial branch has no publication of its own. All these facts limit the exercise of rights by the population as a whole, and indeed by officials of the executive and judicial branches and lawyers.

37. The reason given to the Special Representative for the absence of an official press to publish legislation was the shortage of resources; this argument is unconvincing. The cost of a printing press to meet the country's needs is not excessive. Even if it was expensive, the same difficulty has been put forward as an excuse year after year, while no action has been taken to gradually raise the necessary resources. In this connection, reference should be made to the

observation made by the preceding Independent Expert eight years ago: "Also noteworthy is the president's request for the United Nations to help the country by providing it with a printing press (letter dated 23 September 1991, addressed to the Under-Secretary-General for Human Rights) when the country has already been given a working printing press capable of meeting its needs by the Government of Spain" (E/CN.4/1992/51, para. 117). In addition, in 1999 the Government of the United States gave UNDP a cheque to be forwarded to the Government as a donation for the purchase of a press; because of internal difficulties within the Government, the cheque has not been cashed.

38. A positive development is the agreement concluded between the Government and the periodical La Gaceta whereby the latter undertakes to publish the text of a law in every edition. However, the partial and occasional publication of current legislation cannot be regarded as sufficient to contribute to the rule of law. As has already been recommended, publication by a competent State organ is a necessary condition for increasing knowledge of and respect for the law, both by citizens and by the law-enforcement authorities. The Special Representative is obliged to reiterate the recommendation that an official gazette should be instituted, that it be published regularly and frequently, and that it be the medium for the publication of laws and other administrative measures which the public have a right to know about.

E. Freedom of movement

39. The Special Rapporteur noted, both on the island of Bioko and in the mainland region of Rio Muni, the existence of military roadblocks which substantially limit the rights recognized in article 12 of the International Covenant on Civil and Political Rights. According to the Government, the purpose of these roadblocks is to conduct customs examinations since effective control of the frontiers is impossible owing to the limited human and financial resources available. At 6.15 p.m. on 16 November, the Special Representative was detained at the roadblock at kilometre 10 on the road from Bata to Niefang for having taken a photograph of the vehicles awaiting inspection. The military chief reprimanded him and warned him that, if he had not been a representative of the United Nations, he would have been arrested for taking photographs of military installations. Governmental authorities had, however, assured him that the roadblocks were not of a military character.

40. As has been repeatedly mentioned in the reports of the preceding Special Rapporteur and Independent Expert, these roadblocks not only constitute a serious violation of the right to freedom of movement within the country, but are a source of abuses by the military officials assigned to them. Cases of arbitrary detention, unwarranted confiscation and ill-treatment are daily occurrences at these roadblocks.

41. Various forms of internal exile are imposed by local executive authorities against representatives of the opposition. The Special Representative received credible testimony and documentation relating to this practice. Thanks to the presence of roadblocks, the persons concerned are not allowed to leave or return to their village of origin.

42. Another serious measure limiting the rights protected by article 12 of the Covenant is the exit visa requirement for persons leaving the country, which must be issued by the police

authorities. The Special Representative believes that this visa may be used to impede free movement. There have been cases in which the visa has been refused or issued late to opposition leaders.

F. Right to physical freedom and integrity of the person, and conditions in detention centres

43. The Special Representative visited Malabo public prison (known as Black Beach) on two occasions, and also and the public prison in the city of Bata (on the mainland). In addition, he visited the police detention centre in Malabo once and the police jail in Bata on two occasions. In the town of Añisok he visited the police detention centre, where there were no prisoners.

44. Authorization to enter the area surrounding Malibo prison had to be issued by the Deputy Minister for National Security, the reason given being that it is situated in a presidential district. In addition, the prison and its surroundings are under the authority of military personnel. This is also the case with Bata prison, even though it is not in a presidential district.

45. In the course of his visit to Malabo prison the Special Representative found conditions to be very unsatisfactory. The list he was given contained the names of 98 prisoners. Officially he was told that there were 61 beds, and it was added that some prisoners slept on mattresses which they rolled up and kept during the day and used at night, and that in other cases some prisoners shared beds. There is a flagrant lack of other facilities such as an infirmary, workshops, and study and work areas.

46. At Malabo prison the Special Representative found eight prisoners each shut in cells measuring approximately 1.50 metres by 70 centimetres. Another prisoner, making a total of nine, had been subjected to the same incommunicado regime but had been taken to hospital in a serious condition a few days before. These prisoners had been sentenced to death following the events of 21 January 1998, but this was commuted to life imprisonment by a decision of the President of the Republic. The authorities explained to the Special Representative that they had been confined in small cells as punishment for trying to escape: the punishment consisted in shutting them up in the cells from 3 p.m. until the following morning, when they were allowed out in the sun with the other prisoners. However, the Special Representative observed that: (a) these nine prisoners were being held permanently in these cells and that they had not made any attempt to escape or perpetrated any other kind of incident; (b) they stayed in those cells the whole time and were not allowed to see or be in the sun; (c) they had no access to medical services and were all suffering serious illnesses as a result of their conditions of detention or following torture during their pre-trial detention at the police station; (d) their diet was totally inadequate, and (e) they had no contact with their relatives, whom they were unable to see and about whom they had heard nothing ever since they were sent to Malabo prison in May 1998. The state of health of all the prisoners was patently deplorable. To the Special Representative it was obvious, as each of them stated, that instead of benefiting from commutation of the death penalty, they were being subjected to a slow, tortuous death.

47. Shortly before the visit to Malabo prison a prisoner had died: he was Digno Sepa Tobache, aged 23, who had died on 19 October 1999. According to credible witnesses, his death occurred as a result of blows and excessive ill-treatment during his imprisonment.

48. On the same day as the Special Representative learned of the conditions of detention of the nine incommunicado prisoners, he requested the Prime Minister, the Minister of Justice, and the Minister for Foreign Affairs and Cooperation to put an end to that totally unacceptable situation. These eminent persons expressed their surprise at the situation and undertook to remedy it. The Special Representative made the same request seven days later to the President of the Republic, who agreed with him that the treatment being meted out to these prisoners was inhuman, and asked the Minister of Justice (who was also present) to remedy that irregular situation as soon as possible. Two days later the Special Representative made a second visit to Malabo prison and found that the same prisoners were still shut in their cells. On 26 November, after the Special Representative had left the country, the Minister of Justice informed him by telephone that he had terminated the incommunicado imprisonment of these prisoners.

49. In the most recent report submitted to the Commission by the previous Special Rapporteur, information had already been given about the reprehensible treatment being received by these prisoners (E/CN.4/1999/41, para. 39). The Independent Expert had also found prisoners suffering the same cruel and inhuman conditions of detention (E/CN.4/1992/51, paras. 70 and 108). The Special Representative accordingly urges the authorities of Equatorial Guinea to terminate this practice, which appears to be systematic.

50. The Special Representative also received the complaint of Mrs. Aniceta Noacho Elako. On 5 June 1999, when taking food to her brother in Malabo prison, she was beaten up by soldiers in the presence of her brother, who had been specifically summoned to witness the incident. He was serving a prison sentence as a result of the events of 21 January 1998.

51. The Special Representative visited Malabo police station, where conditions of detention are also deplorable. There is nowhere for the detainees to go to the toilet or wash their bodies. When persons are detained for more than 72 hours, which frequently happens, conditions of hygiene deteriorate even further, which may have serious consequences for their health.

52. In Bata prison, the Special Representative visited all parts of the building and, except for a padlocked room which he was told belonged to a prisoner working outside, he was able to have access to all facilities. Conditions are very poor, and the governor's report contained a written reference to the very decrepit state of the building. Like Malabo prison, this prison has no infirmary or work or study areas for prisoners. Prisoners unanimously complained about the lack of access to the toilet area, which was separated by a grille that is not always opened. This obliges prisoners to relieve themselves in the same place as where they eat. This situation can and must be remedied immediately, as the Special Representative told the prisoner governor. The latter explained that the grille is closed by the soldiers who guard the prison, consequently, a decision to remove the padlock and keep the grille open would have to be taken jointly with the military authorities.

53. During his visits to the police stations in Malabo and Bata, the Special Representative was informed of the 72 hour time limit, set by law, on police custody without intervention by the judicial authorities. He was told that, after that period, detainees must be released or placed at the disposal of the court in order that, in the latter case, the judge might decide what action to take. The Special Representative nevertheless noted that in many cases the time limit was not

complied with and even greatly exceeded. The authorities acknowledged that time limits are frequently extended and that they do not have suitable quarters in which to hold pre-trial detainees.

54. The Special Representative made his first visit to Bata police station on 15 November, when he asked to see Mr. Juan Obiang Late and Mr. Teodoro Abeso Nguema. According to their relatives, these men had been arrested on 9 and 11 November 1999 respectively but were not on the list of detainees shown to the Special Representative. The list for Sunday, 14 November, did contain their names, and the reason for arrest was given as "by order of higher authority". The senior officers at the police station were unable to say what had become of those men, but they did not rule out the possibility that, if they were not listed, it was because they had already been released. The Special Representative informed the officers that it was necessary to keep a precise record of the admission and release of any person whose freedom was in any way involved. After the visit, the Special Representative contacted these men's relatives, who told him that they were still being held at Bata police station. When he heard this, the Special Representative decided to return to the police station, unannounced, on Tuesday, 16 November. With the authorization of the police superintendent, and together with him, he again visited the detention quarters within the police station. There he was able to talk to Teodoro Abeso Nguema, who told him that he and his companion Juan Obiang Late had been taken from the police station the previous day to prevent the Special Representative from talking to them. On that second occasion, the Special Representative was unable to speak to Juan Obiang Late, who, he was told, had been taken from the police station to do some work for a senior official. The report for 16 November again showed the names of these men, and the reason for their arrest was again given as "by order of higher authority".

55. The case described shows flagrant irregularities practised by the security agencies in violation of the right to freedom. The men in question had been detained for over 72 hours without any intervention by a judicial authority. The detention itself was arbitrary in that it had not been ordered by a judicial authority and was not the result of an arrest flagrante delicto. The so-called "order of higher authority" is a form of arbitrary detention by State officials. According to the detainees, the reason for their arrest was the fact that they had printed out from the Internet an article published in the Spanish newspaper El Mundo about the health of the President of Equatorial Guinea; such action cannot reasonably be regarded as constituting an offence.

56. The Special Representative invited the Government to investigate and sanction conduct such as that described, which was designed to obstruct the mission he had been authorized to carry out. He also invited the Government to correct it and ensure that it did not recur since it had not been an unusual occurrence; previous Special Rapporteurs and the Independent Expert had experienced similar incidents, as emerged, for example, from the report of the previous Special Rapporteur (E/CN.4/1999/41, para. 37).

57. The dowry is a traditional ancestral practice in Equatorial Guinea in which the husband's family gives goods to the wife's family as proof of the serious nature of the commitment. If the marriage bond is dissolved, the dowry has to be returned, on the basis of a decision by the traditional courts, which determine the legal right and the amount. If it remains unpaid, the woman, or her father or her brother, as the competent legal authority may decide, may end up in

prison. The Special Representative was informed by the magistrate in Niefang that someone there had been imprisoned for failing to return the dowry. In this regard, the Special Representative wishes to draw attention to article 11 of the International Covenant on Civil and Political Rights, which states that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation". The authorities of Equatorial Guinea should publicize this provision and ensure its observance since it in no way detracts from compliance with obligations stemming from domestic laws or the applicable traditional law (see also para. 89).

58. The Special Representative was prevented from visiting the Gendarmeria Nacional in Bata. Despite four days of repeated asking, the officials coordinating his visit were unable to obtain permission to visit this institution, which also houses prisoners. Such information as was obtained indicate that it is in a very bad state.

59. The Special Representative wishes to make some detailed remarks on prisons, in accordance with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) and the Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111 of 14 December 1990), and the recommendations formulated by his predecessors, Mr. Volio and Mr. Artucio.

(a) Persons deprived of liberty may only be restricted in the exercise and enjoyment of the rights which have been legally affected and by means of the restrictions stemming from the fact of imprisonment;

(b) The State has the obligation to provide all persons deprived of liberty in prisons with adequate food;

(c) Supervision of prisons, and also internal order and discipline, must be ensured by a professional civilian body specially trained for the purpose;

(d) Any corrective measure to ensure or restore order and discipline must be adopted through an adversarial procedure which ensures the right of defence of the accused and is decided by an independent and impartial authority;

(e) The State has the obligation to provide medical and health assistance to persons deprived of liberty in prisons. Any cruel, inhuman or degrading treatment of such persons is prohibited. Any person who practises such treatment must be investigated, tried and punished by the competent judicial authorities;

(f) In prisons men must be separated from women and convicted prisoners from untried prisoners;

(g) When persons deprived of liberty do work or perform other duties, they must be paid in accordance with local rates, and in no circumstances may they be required to perform demeaning tasks. Generally speaking, they may not work without pay, or for the benefit of the authorities or their relatives;

(h) In every place where persons are imprisoned a strict and careful register must be kept of persons entering and leaving the facility; in the latter case, it must be clearly and precisely indicated whether they have been released or where they have been transferred to.

G. Right to due process (and independence of the judiciary and separation of powers)

60. The existence of an independent judiciary is necessary to ensure observance of the fundamental rights of individuals. In Equatorial Guinea, the Constitution (or Fundamental Law) asserts the independence of the judiciary vis-à-vis the executive and legislature (art. 83). The body of law applicable to the judiciary, in addition to the Constitution, is contained in the Judicial Organization Act, promulgated in 1984 and amended in 1986 and 1988, which lays down the structure of the judicial service, and Decree No. 87 of 22 July 1987 which establishes a list of incompatibilities in respect of the personnel qualified to administer justice.

61. However, as a UNDP study notes, practice departs considerably from the legal norm, which means that judicial independence is seriously restricted (United Nations, "Situation of the administration of justice in Equatorial Guinea", prepared by Alejandro E. Alvarez, August 1998, p. 7). The previous Special Rapporteur warned in the first report he submitted to the Commission on Human Rights that "the independence of the Judiciary is not guaranteed and (...) the rights of the defence (...) are not respected" (E/CN.4/1994/56, para. 54). The Independent Expert had said much the same in one of his last reports to the Commission: "There is no separation of powers. The Supreme Court of Justice (...) [is a] servile instrument(s) of the President (...). In other words, besides being Head of State and President of the Democratic Party of Equatorial Guinea, (...) the President of the Republic is also the leading member of the judiciary and responsible for appointing and dismissing magistrates and judges" (E/CN.4/1992/51, para. 103).

62. The independence of the judiciary is compromised by insecure occupancy of posts and the absence of a system of selection based on objective criteria. Although the Constitution provides that magistrates of the Supreme Court of Justice are to be appointed by the President of the Republic for a period of five years (art. 91), the Judicial Organization Act adds that these appointments are free and revocable, thus endowing the President with excessive powers which call judicial independence in question.

63. Some legal norms permit undue interference by the Ministry of Justice with the judiciary. Decree No. 58 of 9 April 1988 grants this branch of the executive powers of supervision of the courts and of judicial appointments, which jeopardize the separation of powers. Recently, by Presidential Decree No. 76/1999, a commission was established, under the chairmanship of the Minister of Justice, to deal with corruption in the judiciary. It is to be feared that this step will give the executive more control over the judiciary.

64. One consequence of the primacy of the executive over the judiciary is the existence of a "de facto system of justice". Some executive authorities, primarily related to security bodies and military institutions, are above the law and remain exempt from any judicial control of their activities. This report has already noted the involvement of military units in prison administration and certain practices affecting personal freedom (such as the extra-legal powers attributed to "higher authority").

65. These practices also extend to the failure to implement judicial decisions, as in the case of a senior official, Francisco Mba Mendam, Government Delegate of Micomeseng district, who was sentenced to 30 years' rigorous imprisonment for the murder of a former ambassador of Equatorial Guinea to France. Instead of being sent to Bata prison, as he should have been, he is allegedly living as a guest in the home of the Deputy Inspector-General.

66. The Special Representative was informed of the case of the lawyer José Olo Obono (who defended several of those charged and subsequently sentenced for the events of 21 January 1998), on 21 July 1998 he was arrested and charged with injurious behaviour by the prosecutor's office. During the oral proceedings, the prosecutor withdrew the charge for lack of documentary evidence. Although no charge was preferred by the Attorney-General, the Court of Appeal for the island region sentenced him for the offence of injurious behaviour to five months and one day of imprisonment and a fine, as a result he was in prison until mid-January 1999.

67. For the court which sentenced him, one aspect of his offence was that, having acted as counsel for Mr. Martin Puye (one of the accused in connection with the events of 21 January 1998) in the military court, "he has nothing to do with any problems that may arise in connection with this person and are not of a strictly professional nature, in the case in question, as emerges from the proven facts, when the relatives of his client called on him, following Mr. Puye's death, about the problem of the return of the body, the lawyer currently charged should have refused to see them, since the problem in question, in accordance with professional ethics, is not within his remit" (judgement of 11 September 1998).

68. The case of this lawyer illustrates the relationship of dependence between the judiciary and the executive, since the latter used the courts to attack a private individual who had criticized its activities in the Spanish media. In addition to the lack of consistency in the description of the facts comprising his alleged offence, there is a complete lack of independence and a desire to make an example of Mr. Olo and teach all the Government's potential critics a lesson. As the previous Special Rapporteur observed, the Basic Principles on the Role of Lawyers were patently ignored in this case, particularly principles 16, 17 and 23 (E/CN.4/1999/41, para. 36).

69. Military judges are empowered to arrest, investigate and try civilians. Many of the executive's senior officials regard such powers as normal and do not see them as contrary to the principle of the separation of powers proper to a State subject to the rule of law. They argue that it is military justice that should institute proceedings for acts of violence, even when committed by civilians, such as the attack on military facilities, or the use of military weapons or uniforms. Military justice, however, does not limit itself to such cases, in which its impartiality would in any case be dubious since it would simultaneously be judge and party. Military judges pass sentence for offences such as insulting the Head of State, and also conduct interrogations and investigations based on vague charges which do not refer in detail to a specific offence.

70. Mr. Plácido Mikó, Secretary-General of the Convergencia para la Democracia Social (CPDS) party, was arrested in Bata on 10 September 1999. He was subsequently released but, according to information the Special Representative received from the Minister of the Interior, his case is before a military examining court. His arrest has not been properly explained, although various motives have been adduced to justify it, none of them seems either well-founded or credible.

71. Mr. Mikó's case highlights the improper jurisdiction of the military courts in Equatorial Guinea. In the course of the last 20 years, the Independent Expert and the Special Rapporteurs have all recommended that it should be restricted to offences of a military nature committed by serving military personnel. The Special Representative discussed this with several senior officials and the President of the Republic. He urges the Government to comply with this recommendation and put an end as soon as possible to the improper extension of military jurisdiction to civilians.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. General economic situation

72. Equatorial Guinea's oil exports have expanded considerably since 1996. Although the Mobil oil company admits to a current production rate of around 90,000 barrels a day, others familiar with the facts consider that it may exceed 100,000 barrels a day and could increase with the recent discovery of oilfields on the mainland. Progress in this important sector can be seen in the upswing in the gross national product (GNP), which grew by 71 per cent in 1997 and 22 per cent in 1998. According to the indices supplied by UNDP in its latest Human Development Report, Equatorial Guinea's per capita GNP rose from US$ 380 in 1995 to US$ 944 in 1997, when oil extraction was only beginning. International Monetary Fund (IMF) forecasts are encouraging; real GNP growth of approximately 18 per cent is anticipated in 1999, reflecting increased oil production and a recovery in the timber sector, which underwent a period of crisis in 1998.

73. According to UNDP, Equatorial Guinea ranks 131 in the world Human Development Index, which means that it has made up three places over the past year and gone from the group of countries with low human development to the medium human development group. However, enjoyment of economic, social and cultural rights is still seriously limited to a minority of the population.

74. In 1999, an IMF mission looked at developments in the economic and financial situation in recent years and prospects for the year 2000. In its memorandum on the mission, IMF warned the authorities of the need for greater transparency in handling public sector resources (particularly from oil exports) and in incorporating them into the State budget. IMF suggested that the Government's macroeconomic strategy should be based on building up reserve funds and their prudent use in the medium term, to ensure the development of human resources and promote productive investment, the diversification of the economy and the creation of bases for sustained growth in sectors other than oil and timber, and also improve the living conditions of the population. The Special Representative supports this recommendation, which would enable the people of Equatorial Guinea as a whole to enjoy the country's wealth. He welcomes the

recent Decree No. 74 of 5 August 1999 establishing a "Fund for Future Generations", and hopes that it can be implemented as soon as possible. If it were set up with 0.5 per cent of present oil revenues, it would make for continuity in the development of the country's economic structure.

75. In this context, a national conference last November brought the Government and sectors of civil society together to evaluate the recommendations formulated at the first National Economic Conference of 1997. Representatives of the Government consider that the evaluation was a success since the Government's economic policy had made it possible to carry out almost all the recommendations adopted in 1997. This optimism contrasts with the lack of official information about oil revenues, their incorporation into the national budget and how they were allocated within it.

B. Right to health

76. Data supplied by the United Nations and other agencies working in Equatorial Guinea gave a less than encouraging picture of the health-care system and the effective enjoyment of this right by the population. The previous Minister of Health and current President of Parliament, Mr. Salomón Nguema Owono, shared this opinion.

77. The Human Development Report 1999, published by UNDP, gives an infant mortality rate of 109 per 1,000 live births, and 172 per 1,000 for children under five. These are some of the highest rates for the entire sub-Saharan region and higher than in countries with a lower Human Development Index. According to government sources, inadequate budget allocations for the health sector, coupled with the persistent devastation prior to 1979, are affecting the recovery of the sector.

78. According to data supplied by the President of the House of Representatives of the People, the commonest disease continues to be malaria, which is endemic throughout the country but takes on more malignant forms on the island of Bioko. The frequency of cases of typhoid fever is also alarming. The incidents of AIDS is still limited, with 3,000 persons seropositive and 40 suffering from the disease, of whom 7 have died. The results of a survey by the Ministry show that 60 per cent of those affected appear to be women. According to the WHO representative in Equatorial Guinea, the AIDS phenomenon is much more serious than is officially admitted, and it is feared that in less than seven years the situation could become really disastrous unless immediate attempts are made to remedy it.

79. The Special Representative was able to visit the public hospital in Bata, although he was unable to interview the director and hear his views on problems and the steps taken to solve them. He was able to observe the dreadful conditions in which the health system operates and the dilapidated state of the buildings.

80. Both United Nations representatives and the persons in charge of bilateral cooperation informed the Special Representative of the blocking of many health sector projects because of the Ministry's failure to act. funds earmarked for AIDS awareness campaigns and for reinforcing the health system, for example, thus remain unused. The Special Representative was

informed that in October 1999 the non-governmental organization Médecins sans Frontières had terminated its technical assistance projects owing to the lack of cooperation on the part of the authorities.

C. Right to work

81. The Special Representative wishes to draw attention to the restrictions affecting the right to work. In addition to the warning already given by the previous Special Rapporteur on the "major lack of sources of work and employment, and very high rates of unemployment and underemployment" (E/CN.4/1997/54, para.74), there are alarming complaints that, both in the Government and in private enterprise, means are being used to prevent persons who are not faithful supporters of the governing political party from obtaining jobs.

82. In the Government, an official whose political opinions diverge from the official line is simply removed from his post. In large private firms, especially the oil companies, labour is normally recruited through intermediary agencies under the thumb of officials of the governing party. In addition to collecting a sizeable commission from the worker, they require him to show the governing party membership card before he can be employed by the firm. When an employee is hired directly by private employers or entrepreneurs, the governing party puts pressure on them - sometimes unsuccessfully - to employ only its accredited activists.

83. It was also reported to the Special Representative that in recent years cuts in government posts carried out in the context of the IMF structural adjustment recommendations were discriminatory and mainly affected opposition activitists.

84. There is no recognized trade union organization in Equatorial Guinea. The Government says that it is on the point of promulgating a law governing exercise of the right of trade union association, but there is no evidence of any activity in this connection (see para. 31).

D. Right to education

85. It is a matter for concern that only 1.8 per cent of Equatorial Guinea's income is earmarked for education (UNDP, 1999), less than the average percentage in developing countries. As already said in previous reports, school drop-out rates among girls remain disturbing, since this means that there is no possibility of rectifying the serious imbalance in educational levels between the sexes, as described in the next section of this report on the status of women. The Special Representative received reports of frequent instances of corruption among teachers in schools, such as the buying and selling of marks or the bartering of marks for sexual favours, representing problems which seriously affect education in Equatorial Guinea.

86. Generally speaking, the characteristics of the education system are: (a) late entry, since 45 per cent of primary pupils are above average age for admission to this level; (b) repetition of classes; (c) high drop-out rates, more among girls than boys (see para. 90), increasing with age; (d) inadequate quality of teachers; and (e) low fiscal expenditure per pupil, accounting for only 5.6 per cent of the annual expenditure of the State budget.

E. Status of women

87. According to the Human Development Report 1999, published by UNDP, the GNP produced by women was 1,066 (purchasing power parity in United States dollars), while that produced by men was 2,589. According to data from the same report, female illiteracy is 29.9 per cent while male illiteracy is 9.5 per cent. Although the number of females in school has increased in recent years, according to government data, only 12 per cent of females reach the secondary level compared with 24.4 per cent of men. The number of girls entering primary school is almost the same as the number of boys, but moving up the levels, the proportion of girls in secondary and university education steadily diminishes.

88. As to jobs held, despite the positive trends of recent years, women are still very thin on the ground, accounting for 12.6 per cent in management, 29.6 per cent in the scientific professions and only 2 per cent of owners of businesses.

89. During his visit, the Special Representative discussed the problem of women imprisoned for non-payment of a dowry (see para. 57) with a wide range of people. The Niefang district judge told him that this is still common and that on average 40 to 50 cases are recorded annually in his district. It is a matter for concern that prison for non-payment of dowry is not considered to be a real violation of human rights. The fact that attempts are being made to arrest the fathers or brothers who normally receive the dowry rather than the wife, is offered as a mitigating factor. The Special Representative reiterates that this is a serious matter, whether it is women or men who are affected.

90. A recent report brought out by the Ministry of Education, the Ministry for Social Affairs and the Status of Women, and UNICEF on the occasion of a campaign for the education of girls, states that only 9 per cent of girls finish fifth grade in primary school. Female drop-out from school has been growing as the years goes by. The main reasons are the persistence of women's inferior role and discrimination within the family, to the point of considering daughters to be a source of income owing to the dowry tradition.

91. The Minister for Social Affairs and the Status of Women expressed her concern at the situation of inferiority in which women find themselves because of their lack of education. She noted that some credit programmes, targeted at women, had run into serious difficulties because of women's lack of know-how and experience of finance and accounting in resource management. She explained that her Ministry was preparing a programme, with support from UNICEF, on the revision of the law so as to do away with discriminatory laws against women. She admitted that there were customs that impeded the recognition and enjoyment of certain rights for women and said that she opposed the imprisonment of women, or indeed any person for failure to pay a dowry.

F. Rights of girls and boys

92. Enjoyment of the rights of girls and boys is precarious, particularly because of the health situation and the high rate of infant mortality, as has already been said. There is also a high rate of child labour, as emerges from a 1997 study by the Ministry of Education, 84 per cent of the 336 girls and boys interviewed admitted that they engaged in some kind of work.

93. The obligation to ensure that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so" (Convention on the Rights of the Child, art. 37 (c)) is not met. The Special Representative met two children under 18 detained in Bata police station. Although he asked the authorities to separate them from the adults, two days later he again found them with adults in the same police station, the authorities showing no inclination to transfer them to more appropriate quarters.

94. The Special Representative has appreciated the many activities that the authorities, in collaboration with the UNICEF office, have undertaken to make the population aware of the rights of girls and boys, including the celebration of the tenth anniversary of the Convention on the Rights of the Child. An effective programme to improve their situation should be a matter of priority, bearing in mind that under-15s account for 44 per cent of the population.

IV. TECHNICAL ASSISTANCE TO EQUATORIAL GUINEA IN THE FIELD OF HUMAN RIGHTS

95. The Commission, in its resolution 1999/19, requested the Special Representative to "monitor the situation of human rights in Equatorial Guinea" (para. 10) and to include in his/her report recommendations on the implementation of the programme of technical assistance, with particular emphasis on human rights, the administration of justice and the legislative reforms, and the strengthening of the capacity of non-governmental organizations, as well as other groups of civil society (para. 11).

96. The Commission has been following the human rights situation in Equatorial Guinea with great concern for over 21 years, as mentioned in the introduction to this report. In the past 20 years, the reports of the rapporteurs and experts appointed by the Commission have all noted the same problems affecting the human rights situation in Equatorial Guinea year after year, and have made the same recommendations to solve them.

97. In the last 20 years, successive rapporteurs and experts have also agreed to recommend and organize technical assistance activities in order to strengthen the capacity of the national authorities and the local population to protect human rights and prevent and sanction any violations of them. The Special Rapporteur proposed a first plan of action in his 1980 report (E/CN.4/1439 and Add.1), which was endorsed by the Commission in March 1982 in its resolution 1982/34. Under the plan, two experts provided assistance in revising the draft for the new constitution in July 1982. Two more experts went to the country in January 1986 to assist in the drafting of various codes, and made detailed recommendations for progress in that area. In 1990, the Centre for Human Rights, in cooperation with the Government of Spain, provided the advisory services of another two consultants to help in preparing a civil code and a penal code. In 1991, the Independent Expert called the 1980 plan of action "defunct", as he believed that "announcements and pronouncements must give way to the more important business of effective measures to institute a representative, democratic regime", and consequently proposed a new "emergency plan of action" (E/CN.4/1992/51, paras. 124 and 125).

98. In 1994, the Office of the High Commissioner for Human Rights drew up a plan based on the recommendations made by the new Special Rapporteur in his first report to the Commission (E/CN.4/1994/56). Under this plan, advisory services were provided between March 1995 and

July 1996 to deal with training in the treatment of prisoners, rules on the independence and impartiality of the judiciary, human rights and civil liberties, and women's rights.

99. The technical assistance given to Equatorial Guinea in the field of human rights has been evaluated several times. The last time this was done was in February 1997, when a two-member assessment mission of the Office of the High Commissioner concluded that actual progress in the protection of human rights in Equatorial Guinea would be minimal "as long as the highest government and judicial authorities show no desire to put an end to the impunity enjoyed by State officials who are the actual perpetrators and the instigators of human rights violations" (E/CN.4/1996/67, para. 55).

100. As a result of the monitoring by the Commission on Human Rights of the situation in Equatorial Guinea and the technical assistance it has provided, and also the recommendations made by the rapporteurs and experts to improve the situation, some progress has been achieved in the last 20 years, including, but not limited to:

(a) The legalization of political parties other than the governing one, which were previously banned, and the conclusion of the National Pact on Democratization and the implementation of various electoral processes, all of which, despite the undeniable limitations within which they have taken place, are elements that can contribute to progress in the democratization of institutions;

(b) The amnesty laws, the release of political prisoners thanks to various clemency measures and the return of political leaders from exile;

(c) The ratification of international human rights treaties such as the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, even though the reporting obligation has not been duly complied with;

(d) The establishment of the Ministry for Social Affairs and the Status of Women;

(e) The provision of beds in Malabo prison, which formerly had none at all.

101. However, most of the repeated recommendations made during the last 20 years with regard to Equatorial Guinea have yet to be acted upon. The former Special Rapporteur pointed out, in the conclusions of the last report he submitted to the Commission (E/CN.4/1999/41), that he had noted "a disturbing lack of progress towards democratization" (para. 60 (a)) and that "it does not appear that the independence of the judiciary has been strengthened, or that the functional deficiencies noted in the Special Rapporteur's previous report ... have been remedied" (para. 61). The present Special Representative, appointed by the Commission in 1999, found that in some important areas the situation described by his predecessors had not changed, and therefore their recommendations were still applicable. A detailed list of those areas (concerning violations such as arbitrary detention, torture, censorship, judicial bias, the concentration of powers, political persecution, discrimination against women and extreme poverty) will be given in chapter VI, "Recommendations", of this report.

102. Moreover, the Special Representative noted the emergence of a new cause for concern: anyone who is not a member of the governing party is finding it increasingly difficult to find work or a job in either the public or the private sectors.

103. The delay, unwillingness and slowness in putting into effect even the most easily implemented recommendations on substantive issues in Equatorial Guinea is plain to see. In 1989, the Government declared that it hoped to adopt and ratify the Convention against Torture and the Convention on the Elimination of Racial Discrimination in early 1990 (E/CN.4/1990/42, para. 17). Ten years later, during the visit by the present Special Representative in 1999, the Government said it had not yet been able to approve those conventions because it needed to study the reservations made by some States at the time of ratification, but had not been able to find them in Spanish. Similar excuses have been given to justify non-compliance with the repeated recommendation regularly and periodically to publish laws in an official gazette. Military courts continue to try civilians, roadblocks set up by the military continue seriously to hamper freedom of movement, people are still frequently arrested without a warrant, and torture or ill-treatment in captivity are still commonplace. Recommendations of this sort, and many other similar ones, do not require technical assistance to be put into practice. Other recommendations, in whose implementation assistance would be required (and has been provided repeatedly during the last 20 years), have still not been acted upon. They include the codification of the main substantive and procedural laws: the country continues to be governed by the civil and penal codes in force in Spain in 1968, when it gained its independence.

104. The recommendations made in the course of the last 20 years to improve the human rights situation in Equatorial Guinea need to be implemented as soon as possible if there is a real desire to change the present pattern of persistent, widespread and systematic violations. With a view to achieving the early implementation of the recommendations, it would be useful if the authorities of Equatorial Guinea gave an undertaking to the Commission on Human Rights that it would adopt a national human rights action plan, in accordance with the recommendations of the Programme of Action (para. 71) of the 1993 World Conference on Human Rights, held in Vienna, and if this plan was supported and monitored by the Commission.

105. In an interview granted to the Special Representative, the Head of State, President Obiang Nguema Mbosogo, said that the preparation of a national human rights action plan or programme was a desirable objective: he suggested that the programme might last one year, at the end of which, following the step-by-step monitoring of its implementation, it would be clear whether the political will existed to make progress in human rights matters. In the Special Representative's opinion, the starting point for the preparation of that plan should be the complete set of recommendations made by the rapporteurs and experts appointed by the Commission during the last 20 years, and which are repeated once again in this report. The plan could consist of ranking the recommendations according to their priority and feasibility, giving target dates for the implementation of each, or for the identification and removal of specific obstacles currently preventing any of the recommendations from being put into practice.

106. Once the commitment has been made to prepare the above-mentioned national plan, the United Nations can provide appropriate technical assistance for its development, on the basis of the principles laid down in the Vienna Declaration and Programme of Action. The principles concerned are those of efficiency and transparency in technical cooperation programmes

(para. 34), the protection and promotion of human rights as a priority objective of international cooperation (para. 4 and paras. 66-77), the coordination of promotion and protection activities within the United Nations system (para. 4 and para. 1), and the importance of complementing technical assistance services with human rights monitoring services (para. 34 and paras. 83-91).

107. In accordance with the above, technical assistance to Equatorial Guinea in the field of human rights should be organized by the Commission on Human Rights and carried out by its Special Representative, rapporteurs and thematic working groups, the Office of the High Commissioner for Human Rights and the relevant bodies of the United Nations system. Their activities under the above-mentioned plan, which would be monitored by the Commission, would need to be carefully coordinated. Thus, for example, to implement the recommendation on strengthening the independence of the judiciary, it would be very useful if the Government of Equatorial Guinea were to invite the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers to visit the country to identify the practical difficulties and ways to strengthen that independence and to make the appropriate recommendations in a report to the Commission. He could take advantage of being in the country to publicize the universally recognized basic principles in that area and discuss them with judicial officials and people at large. A similar invitation could be extended to the Special Rapporteur on the question of torture, whose visit to the country would be of undeniable value in making definite progress towards the elimination of this practice. Similar considerations would apply to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

108. Likewise, in order to strengthen domestic mechanisms for the protection of human rights, such as the National Human Rights Commission of Equatorial Guinea, it would be a big step in the right direction if the Office of the High Commissioner, together with the Special Representative, reviewed the organization and work of the national commission to ensure it conformed to the principles relating to the status of national institutions for the promotion and protection of human rights, or "Paris Principles" (General Assembly resolution 48/134 of 20 December 1993).

109. In the same way, the National Programme on Governability, which UNDP has been discussing with the Government of Equatorial Guinea, should be coordinated with the monitoring and technical assistance activities relating to this country that are being carried out on behalf of the Commission on Human Rights. In fact, one of the components of the Programme is the subject of human rights (subprogramme IV). This component should not be separated from the above-mentioned human rights programme, which should be based on the Commission's recommendations for Equatorial Guinea. For the sake of the efficiency of the United Nations system, the monitoring of that component should be carried out in close cooperation with the Commission and its Special Representative, which in turn should lead to better results from the National Programme on Governability.

110. It would also be desirable for cooperation activities in the field of human rights being carried out in conjunction with Equatorial Guinea by States or groups of States Members of the United Nations to be coordinated with the work in the same field being done through the Commission on Human Rights. Without detriment to its independent or discretionary nature, it is clear that such cooperation could be more useful if the international community's efforts in

this area were focused on the adoption and implementation of a human rights plan based on the recommendations of the rapporteurs and experts appointed by the Commission during the last 20 years.

111. As clearly indicated by the Commission on Human Rights in its resolution 1999/19, the technical assistance provided to Equatorial Guinea should place "particular emphasis on ... the strengthening of the capacity of non-governmental organizations, as well as other groups of ... civil society" (para. 11). A similar idea was expressed by the World Conference on Human Rights (paras. 38 and 73) and reiterated by the General Assembly when it adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (resolution 53/144 of 9 December 1998).

112. It has repeatedly been suggested during the last 20 years that a staff member from the Office of the High Commissioner for Human Rights (formerly Centre for Human Rights) should be appointed to provide technical assistance in the field of human rights while living in Equatorial Guinea. Government spokespersons expressed the same wish to the Special Representative during his visit; it appears to be a reasonable initiative. However, it could be ineffective if it is not part of an overall cooperation strategy carefully designed to draw on the rich experience gained in the last 20 years of continuous technical assistance to the country in the field of human rights. This strategy should contain at least the following six elements:

(1) Immediate implementation of recommendations that do not require technical assistance;

(2) Proof of the Government's willingness to implement the remaining recommendations on the basis of the technical assistance it receives for that purpose;

(3) Preparation of a detailed programme, which the Government undertakes to implement, listing activities to be carried out in order to define the way in which each of the recommendations will be put into practice, and the time or deadline by which each one is expected to be fulfilled;

(4) The resident official should be authorized to provide the Commission on Human Rights and its Special Representative with technical support in monitoring the human rights situation, which requires an assurance that the official will be able to collect information on the subject without being harassed, and without his sources of information being harassed, by the authorities;

(5) The resident official should have the capacity to provide technical assistance to organizations from civil society; and

(6) All the above should be jointly coordinated by the Special Representative and the High Commissioner for Human Rights.

V. CONCLUSIONS

113. The human rights situation in Equatorial Guinea is grave, but can be improved if resolute action is taken by the international community in general and the Commission on Human Rights in particular.

114. The clearest evidence of the gravity of the human rights situation in Equatorial Guinea is the legal uncertainty with which each of its inhabitants has to live. At any moment they can be deprived of their liberty and held in inadequate detention centres, and even subjected to torture, by virtue of a simple "order from higher authority", with no warrant or legal grounds for that order, and they have no access to an effective judicial remedy to prevent or rectify that situation. The victims of these serious abuses are mostly political opponents or members of the Bubi ethnic group, but they are also often ordinary citizens. Ministers and senior State officials, as well as United Nations officials, are not free of the risk of falling victim to these violations.

115. The fragility of the rights to freedom and justice in Equatorial Guinea is a factor that worsens the already deplorable level of enjoyment of the economic, social and cultural rights of the majority of the population. It is estimated that 65 per cent of the inhabitants live in extreme poverty and that 80 per cent of national income is in the hands of 5 per cent of the population. The infant mortality rate is very high, being estimated at 109 deaths per 1,000 live births. Life expectancy is less than 50 years. The main cause of death is malaria, which in past decades was under control but today is rife and affects virtually the entire population. Other common causes of death are typhoid fever and bronchial disease. The level of education is poor and the employment situation is also unstable.

116. Despite the difficult socio-economic conditions, the population survives thanks to valuable family ties and community solidarity and easy access to food in the forest. There are no beggars in Equatorial Guinea and most, if not all, of the inhabitants have a roof over their heads.

117. Some of the uncertainty surrounding the enjoyment of economic, social, cultural, civil and political rights has its roots in the past. Equatorial Guinea was governed for many years, before and after independence, with a strong distrust and intolerance of political dissent or opposition.

118. The distrust that grew out of frustration with the experiments in political consensus was heightened by the 1999 parliamentary elections, in which the governing party won 75 of the 80 available seats. The parties that won the remaining seats believed the results were rigged and refused to take their places in Parliament; two opposition members of Parliament agreed to take their seats and were subsequently expelled from their party.

119. In addition to the 13 legally recognized opposition parties, who complain of persecution and harassment, there are 4 banned political parties or movements: the Progress Party, which was declared illegal; the Movement for the Self-Determination of the Island of Bioko (MAIB), whose existence is not acknowledged by some authorities; the Independent Democratic and Social Party (PIDS); and the Fuerza Demócrata Republicana (FDR) party, which has also been refused permission to operate legally.

120. Human rights organizations are not provided for in the law that regulates and monitors the existence of non-governmental organizations. No human rights organization has been granted legal personality, and there is no recognized trade union organization.

121. Another sign of intolerance of dissent is the nature of the punishment for any act considered prejudicial to high-ranking authorities. Criticizing a judicial decision, posting an announcement on the Internet about the health of the Head of State or making statements about Equatorial Guinea on Radio Exterior de España are sufficient grounds for arrest or imprisonment. Priests may also be harassed for speaking out of line in sermons.

122. Although a few, publications appear sporadically, there is no daily, weekly or fortnightly press. The usual news media are radio and television, which are run by the Government and to which the opposition has no access.

123. One common form of persecution, other than deprivation of liberty, is internal exile. There are some local authorities who, without following any judicial procedure and with no legal grounds for their action, use threats to force political opponents and their families to leave their home town or region or the place where they usually live.

124. Another form of persecution or discrimination for political reasons affects the right to work. Many of the activists or supporters of opposition parties have lost their jobs because they are not card-carrying members of the PDGE.

125. The discretionary nature of the military courts' jurisdiction over civilians is one of the main factors in exposing to abuse the right to personal liberty, and thus the rights to physical safety and justice.

126. The simultaneous exercise of judicial and military functions with regard to civilians is not unconnected to the general duties performed by the military and security forces within society in Equatorial Guinea. There is no clear distinction between the police and the military. There are roadblocks where, as a matter of course, the army has the power constantly to check the passage of civilians, who not only therefore find their right to freedom of movement restricted, but also find themselves exposed to abuse of their person and belongings by the security forces during the long waits at the barriers. Anyone arriving by plane in Bata, the biggest city on the mainland, has to be registered by the military at the airport. Prisons are located inside military compounds. For the people of Equatorial Guinea, the wide-ranging powers of the security forces, who act according to military precepts, are a fact of life.

127. Another reason for the tenuousness of the rule of law, in addition to the discretionary nature of the military's actions vis-à-vis the population, is that legal norms are not published in an appropriate manner. Apart from the anecdotal difficulties in overcoming this problem every year, there is clearly an urgent need to establish and guarantee official organs for the publication of legal texts, bills, judicial decisions and other State rules or acts.

128. Women's rights in Equatorial Guinea are particularly affected by traditional discrimination in education and equal access to work. In addition, deprivation of liberty for not returning the marriage dowry when a marriage ends exacerbates such discrimination, quite apart

from being a violation of the prohibition of imprisonment for civil debts. Furthermore, the boom in oil extraction raises fears about a worrying increase in prostitution in general, and child prostitution in particular.

129. The rights of children are particularly affected by the high infant mortality rates and by the lack of appropriate treatment for minors held in detention.

130. One determining factor in the persistence of systematic violations of human rights is impunity. The weakness of the judicial system and the lack of confidence in its impartiality mean that there are almost no formal complaints against perpetrators and, when they are made, they are unsuccessful. Nor is there the necessary confidence in the National Human Rights Commission of Equatorial Guinea, which receives complaints about some violations of labour rights or other subjects that are less serious than arbitrary detention, torture or violations of due process.

131. It would be possible for Equatorial Guinea to ensure, within a reasonably short period, the full realization of civil, political, economic, social and cultural rights for the 450,000 inhabitants living in its territory of 28,000 square kilometres. The multi-party experiment embarked upon in the 1990s, despite the obstacles that have prevented its successful development, forms a sound basis for affirming respect for dissent and consolidating pluralism. The 1993 National Pact, and the attempt to revive it in 1997, have shown the road that leads to that pluralism. All the political movements with whom the Special Rapporteur spoke agree on the road to follow. What is needed are safeguards and the willingness to travel that road together. That willingness is all the more necessary now that the country is entering a period when hopes of economic prosperity are high as a result of the increasing number of rich oil finds since the mid-1990s. Political agreement on the rational distribution of that prosperity is directly related to the realization of the right to development in Equatorial Guinea, satisfying the needs and basic rights of its population, and upholding the right to peace in its territory. The austere living conditions to which the great majority of its inhabitants are accustomed, together with the many valuable family and community ties, would not only facilitate that rational distribution but would also help make it effective in assuring minimum levels of food, housing, health, education and work.

132. The United Nations can play an important role in improving the situation by defining a framework for cooperation with the Government of Equatorial Guinea that will really lead to the promotion and protection of human rights as a priority objective, by simultaneously carrying out coordinated and complementary monitoring and technical assistance activities. This cooperation framework, details of which are given in chapter IV of this report (particularly in para. 112), should be based on a firm undertaking to put into effect in a reasonably short period the recommendations made repeatedly by the Special Rapporteurs and the Independent Expert on Equatorial Guinea appointed by the Commission on Human Rights since 1979.

VI. RECOMMENDATIONS

133. The Special Representative recommends that the Commission on Human Rights should urge the Government of Equatorial Guinea to take prompt and effective measures to put into effect the recommendations repeatedly made to it by this United Nations body during the

last 20 years. These measures can be grouped together under seven main headings, according to the rights or freedoms that Equatorial Guinea has yet to safeguard or observe adequately, as discussed in greater detail below: (a) civil rights, beginning with the right to physical liberty, (b) freedom of opinion and related rights, (c) the principle of legality, (d) the right to justice, (e) women's equality, (f) political rights, and (g) economic, social and cultural rights.

A. Civil rights

134. Firstly, the Special Representative believes it is imperative that the Government of Equatorial Guinea should take the necessary steps to ensure the immediate and full realization of the rights to physical liberty, freedom of movement or circulation, physical safety and human dignity of detainees. This means that, except when someone is caught in the act of committing an offence, arrests without a warrant, or on the basis of an "order of higher authority", must be prohibited, and any violations of this prohibition must be suitably punished so that the practice of arbitrary detention can be stopped. It also means that all State officials must be ordered to refrain from beating, ill-treating or torturing people who, for whatever reason, have been deprived of their liberty. It also requires the Government to order improvements in physical conditions in detention centres by building at least a private toilet and bathroom, with water for washing, in places where there is none (such as the police stations in Malabo and Bata and the prison in Bata), and improving existing facilities at Black Beach prison in Malabo, and also by providing enough beds for persons deprived of their liberty in these and other detention centres. Likewise, an order should be given to remove the military roadblocks on the country's roads and end the requirement for visas or authorization to leave national territory or move around within it, so that people's right to freedom of movement is assured.

B. Freedom of opinion

135. Secondly, the Special Representative recommends that the right to information and the freedoms of opinion and expression, the press and work should be respected through measures such as the decriminalization of behaviour considered offensive to the Head of State or other public authorities. There is also an urgent need to scrap the requirements that prevent news agencies and newspapers or periodicals expressing opinions from operating on a permanent daily basis, both in the print media and on radio and television. More specifically, any practice aimed at restricting eligibility for jobs for political or ideological reasons, for example by requiring job-seekers or those wishing to keep their jobs to produce a card showing their membership of the governing party, should be stopped and prohibited.

C. Principle of legality

136. Thirdly, the Special Representative recommends that the principle of legality should be upheld by systematically and periodically publishing legal norms. For that purpose, there is an urgent need for an official printing press to be set up in the executive, legislative and judicial branches. Moreover, arrangements should be made to make a clear separation between military bodies and the police authorities. Emphasis should be put on the recommendation that Equatorial Guinea should accede fully to the international instruments for the protection and promotion of human rights, and that it should fulfil its obligations under them, as an important contribution to the strengthening of the rule of law. In this respect, the Government needs to

decide on the formal ratification, as announced several years ago, of the Convention against Torture and the Convention on the Elimination of Racial Discrimination. It is also essential that Equatorial Guinea should fulfil its obligation to submit reports to the Human Rights Committee and the Committee on the Rights of the Child, which are several years late, and to the Committee on the Elimination of Discrimination against Women.

D. Right to justice

137. Fourthly, the Special Representative recommends that the right to justice should be safeguarded. This will entail, above all, making the judiciary truly independent and impartial through the adoption of legislative and administrative measures to achieve the required separation between the executive branch and the judicial branch, for example, by abolishing the Head of State's discretionary power to appoint and remove judicial officers. These officers also need to be given adequate professional training. All the above should be part of the overall aim of overcoming impunity by effectively pursuing the investigation, sentencing and punishment of human rights violators. Restricting the jurisdiction of military courts, which should not have competence in respect of civilians, is the necessary counterpart to the democratic strengthening of civil justice.

E. Equality of women

138. Fifthly, the Special Representative recommends that discrimination against women should be combated by taking measures such as ending the practice of imprisoning women for not returning their marriage dowry when they separate from their husbands. Special efforts should be devoted to promoting respect for the equality and dignity of women and to opposing domestic violence. Similarly, women's right to education needs to be boosted by taking action to correct the imbalance in relation to the education received by males. Likewise, specific and effective initiatives should be taken to boost women's right to work.

F. Political rights

139. Sixthly, the Special Representative recommends that political rights, democracy and pluralism should be safeguarded as necessary to strengthen the rule of law. This means, in practical terms, stepping up efforts to fulfil the commitments arising from the agreement signed by the Government and the political parties, known as the "Document on the Evaluation of the National Pact and Legislative Agreements, 1997". Moreover, it is essential to guarantee the right of association by recognizing non-governmental human rights organizations, and also trade unions and political parties, so that they can enjoy true freedom of action. The need to recognize the right to self-determination of the Bubi people deserves particular consideration, without that implying the segregation of the country; on the contrary, it should involve the integration and appropriate recognition of the rights of its various ethnic groups. That would strengthen rather than weaken the opportunities for growth and consolidation of the nation of Equatorial Guinea.

G. Economic, social and cultural rights

140. Seventhly, the Special Representative recommends that economic, social and cultural rights should be guaranteed, especially those that affect the 65 per cent of the population living

in extreme poverty. The new economic resources available to the country as a result of oil extraction should be used principally to satisfy basic needs in the areas of food, health, housing, education and work.

H. Other recommendations

141. Many of the above recommendations can be carried out directly by the Government of Equatorial Guinea, without need for international technical assistance. For example, the Government could immediately put a stop to arbitrary detention and torture, guarantee freedom of opinion and publish legal norms by issuing specific orders to that effect. The Special Representative recommends that the Commission should urge the Government to act decisively to that end given the desire shown by the authorities of Equatorial Guinea to make progress in the observance and protection of human rights. The Government should also be invited to ratify and comply with the international human rights conventions.

142. Once the Government has taken decisive steps to put into practice the recommendations made to it over the years, which depend only on its own decisions, as pointed out in the previous paragraph, the international community could complement those efforts through a technical assistance programme duly agreed upon with the Government. This programme should be supported initially by the mechanisms set up by the Commission on Human Rights for the country and for the most important issues facing it. Consequently, it would be very useful if the Government were to invite thematic rapporteurs, including the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the right to freedom of opinion and expression, to make formal visits to the country. It would also help if it reached an agreement with the International Committee of the Red Cross allowing the latter to act freely around the country.

143. On the basis of any specific recommendations made by the thematic rapporteurs if they visit the country, together with those already made by previous Special Rapporteurs or the Independent Expert and the present Special Representative, a technical assistance programme to be carried out by the Office of the High Commissioner for Human Rights could be drawn up. The contents and oversight of this programme should be closely followed by the Commission on Human Rights through its Special Representative.

144. The Commission on Human Rights should make a point of involving other United Nations bodies and agencies, donor countries and multinationals working in the country, so that the various efforts to cooperate with Equatorial Guinea in the field of human rights can be properly coordinated on the basis of the above-mentioned monitoring and technical assistance programme and activities, and so that all their efforts reinforce each other, without prejudice to the independence and integrity of each protagonist.

145. The Special Representative hopes that the Government of Equatorial Guinea will use the forthcoming municipal elections to prove to the international community that it is willing to develop a truly multi-party democratic system. The elections for mayors and town councils are a great opportunity for the people of Equatorial Guinea. In this regard, the Special Representative

urges the Government to take the necessary steps as soon as possible to have an electoral assistance mission sent to the country by the United Nations or the European Union so that those organizations can send observers.

146. The Special Representative recommends that the Commission on Human Rights should continue to follow closely the human rights situation in Equatorial Guinea and that it should concentrate on the early implementation of the recommendations repeatedly made to the country. To this end, it is essential that the Commission should renew the mandate of a special representative for Equatorial Guinea. In addition to requesting him to monitor the human rights situation in the country by preparing a report and to recommend appropriate technical assistance measures, the Commission should entrust that person with representing it in its contribution to the coordination and monitoring of any cooperation programme which, within the framework proposed in chapter IV of this report, may be agreed upon with the Government of Equatorial Guinea to improve the human rights situation.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Rwanda submitted by the Special Representative, Mr. Michel Moussalli, pursuant to Commission resolution 1999/20

GE.00-10806 (E)

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Executive summary

Pursuant to Commission resolution 1999/20 and to his mandate, the Special Representative undertook four missions to Rwanda in 1999. His mandate is "to make recommendations on the situation of human rights in Rwanda, to facilitate the establishment and effective and independent functioning of the National Human Rights Commission and to make recommendations on situations in which technical assistance to the Government of Rwanda in the field of human rights may be appropriate". While the mandate therefore does not request him to monitor human rights in Rwanda, he has offered his observations and recommendations whenever this has seemed important and necessary. His main observations and recommendations can be summarized as follows.

General Observations. The Special Representative is deeply gratified that Rwanda is stepping out from the shadow of genocide and laying the basis for the transition to democracy. The Government is also to be commended for its efforts to eradicate ethnic labels and to promote reconciliation. On the other hand, there is not yet a full "culture" of human rights in Rwanda. The regional crisis remains relevant and extremely disturbing because the ongoing conflicts in the region create a deep feeling of insecurity and fear among the population and prevent efforts towards reconciliation and promotion of human rights.

Cooperation between the United Nations and Rwanda. The Special Representative is pleased at the growing support for human rights in Rwanda by the United Nations system. He warmly commends the assistance already provided by the High Commissioner for Human Rights to the Rwandan National Human Rights Commission. Hopefully, this will soon lead to a new memorandum of understanding, opening the way to further projects for technical cooperation. It is also to be hoped that UNDP will make more resources available in Rwanda, so as to implement some of the recommendations in this report.

Security in the north-west and the repatriation of refugees. Security improved noticably in north-west Rwanda in 1999, resulting in a corresponding decline in alleged abuses by the Rwandan armed forces. Despite several good harvests, 150,000 people remain vulnerable owing to lack of services. Some 32,000 refugees returned from the Democratic Republic of the Congo last year. There are no reports of systematic reprisals or coercion against returnees, but this does not diminish the need for monitoring by Rwandan human rights groups. Some have reported that civilians are being forcibly recruited into the armed forces in the north-west. They also note growing indiscipline among local defence forces, which are being formed by communities throughout Rwanda.

Civil society and human rights. Civil society is a major focus of the Special Representative's report. He is gratified that the National Human Rights Commission (NHRC) is now in a position to serve as the country's institutional focal point for human rights. He supports the NHRC's efforts to identify realistic priorities and to cooperate with donors with a view to seeking adequate resources and additional funding.

Rwanda's human rights groups are recovering from a difficult period. But their needs are great, and they remain totally dependent on foreign donors. The Special Representative suggests that both sides focus on strengthening the monitoring, advocacy and administrative capacities of

these groups. The Rwandan authorities could help with practical measures and a supportive legal environment. It is also important that the new law on NGO registration allow NGOs maximum flexibility and independence.

The crisis in Rwandan prisons. This year's report devotes considerable attention to detention. It is hard to comprehend that around 120,000 detainees are still crowded into jails and communal detention centres (cachots) five years into the transition - many without being charged. The Special Representative is pleased to report that he sees the possibility of a breakthrough in this dangerous problem. After taking over prison administration last year, the Ministry of the Interior has undertaken a series of bold moves to improve prison administration, train prison guards and expand community service by prisoners. Conditions are worse in the country's 154 cachots which are meant to be temporary and so have no services. These, too, will be taken over by the Ministry, but will require a budget for food and health. Overall, conditions remain unacceptable, and the Special Representative would urge the authorities to accelerate the release of the elderly, the chronically ill, pregnant women and children. The Special Representative's own findings suggest more releases would be possible if communities were consulted in advance.

The Special Representative is gratified to see a trend towards greater involvement in the cachots by international NGOs. In general, however, governmental donors are still reluctant to get involved. The Special Representative strongly appeals to donors to review this policy, and to treat prisons as an integral part of Rwanda's overburdened justice system. Otherwise, they will remain a highly visible symbol of abuse and a barrier to reconciliation.

The justice system - gacaca. In an effort to speed up trials, accelerate releases, identify génocidaires still at large and allow the whole population of Rwanda to participate in a judicial process which will remove impunity and promote reconciliation, the authorities will shortly institute a system based on traditional justice in the Rwandan communities, known as gacaca. Trials could start as early as June, and affect as many as 100,000 of those detained. The Special Representative applauds the boldness of this proposal. At the same time, he notes that concerns have been raised about the logistics of gacaca, as well as its conformity with international legal standards. The Special Representative would argue that much can be done to minimize the risks. He recommends, in particular, that gacaca be launched in a limited number of locations so as to test the practicalities. Such a gesture, however, would have to have substantial support from donors lest their doubts become self-fulfilling. The Special Representative hopes that international support for gacaca will be coordinated and discussed in the context of justice as a whole.

Reconciliation. Rwandans now accept that reconciliation must be a national goal in its own right, and with this in mind the Government last year established a Commission on National Unity and Reconciliation (NURC). The Commission has quickly made its mark and initiated a nationwide dialogue at the grass roots, and the Special Representative appeals to donors to support its work. He would also applaud Rwandans of all backgrounds for their heroic efforts in putting the past behind them and learning to live together.

Helping survivors. There is a strong moral and practical argument for helping the survivors of genocide in Rwanda, and the Special Representative is distressed to report that

many feel abandoned by the international community. He appeals for more imagination, and assistance, from donors. One possibility might be a new fund to provide legal restitution for civil claimants in genocide cases. Another could be funding survivors' groups to compile the names of those who died - an essential form of memorialization. He also supports the kind of initiative in which prisoners are let out to perform community service. These acts of penance promote reconciliation as well as the physical well-being of the prisoners.

Social and economic rights - children. Rwanda's children suffered terribly under the genocide, and those who survived still bear the scars. But it is also time to start looking beyond genocide and understand the wider needs of Rwanda's children - those orphaned by HIV/AIDS, those victims of sexual violence, and those working in the streets. The needs of these children can be viewed in terms of protection and child rights, which underscores the value of the Convention on the Rights of the Child. Rwanda ratified the Convention in 1991, but is five years behind in submitting a second report on its implementation of the Convention. UNICEF is urging the Government to undertake this important task. UNICEF would also like to see vigorous action taken on several new or partially drafted laws.

Social and economic rights - villagization. Rwanda is in the middle of a controversial debate on land and settlement. There is growing pressure on the land in Rwanda, and the Government argues that regrouping Rwandans in village settlements will better facilitate their access to basic services. Out of these different elements has come an ambitious policy of collective resettlements known as imidugudu, or villagization. Concern has been expressed regarding possible coercion. The Special Representative's mission was able to visit three villages in different parts of the country. The mission found that while some coercion probably had occurred, the larger problem was a lack of services. Many settlers would happily take up the offer of a new house if proper services were assured in advance. He therefore encourages the Government to establish a joint programme with donors to improve services in existing villages and develop new pilot sites throughout the country. The location could be left to the newly elected development councils.

Peace, security, economic development and human rights. These are fundamental and interlinked requirements of any human society. No culture of human rights can really take root in any country, in any region, without ensuring that peace, security and economic development prevail for all populations. This is particularly relevant in post-genocide Rwanda. It is therefore of the utmost importance that a comprehensive regional solution is found to the present conflicts affecting the countries in the Great Lakes region of Africa. The Special Representative appeals to all the countries in the region, to the Organization of African States and to the United Nations to use all possible means to ensure that a lasting and comprehensive peace is agreed upon by all the affected countries, and that all the populations in the area are provided with security and with appropriate means to ensure their economic development and prosperity.

I. INTRODUCTION

1. In its resolution 1999/20, the United Nations Commission on Human Rights decided to extend the Special Representative's mandate[1] for a further year and requested him to report to the General Assembly at its fifty-fourth session and to the Commission at its fifty-sixth session. In particular, the Commission encouraged the National Human Rights Commission to organize, with the assistance of the Special Representative, a round table to develop a plan of action for the promotion and better protection of human rights in Rwanda, urged the Government of Rwanda to work with the Special Representative to facilitate this meeting and called on the international community to provide all necessary assistance (para. 27). The Commission further called for close regular consultation between the Special Representative and the Government of Rwanda, the National Human Rights Commission, and all relevant national institutions, regarding the functioning of the National Human Rights Commission (para. 33). In paragraph 30 of resolution 1999/20, the Commission commended the establishment of the National Unity and Reconciliation Commission and urged that international support be provided to enable the Commission to achieve its objectives. The present report, submitted in accordance with resolution 1999/20, is the sixth submitted by the Special Representative pursuant to his mandate.

2. The Special Representative wishes to emphasize that this mandate does not ask him to monitor human rights abuses or violations; rather, it asks him for a broad picture of the situation of human rights, and to advise on how to strengthen the capacity of Rwandan human rights institutions and civil society whose tasks will, of course, include monitoring. Where the Special Representative has found it important and useful, he has offered his opinion on difficult human rights issues in the country.

3. In the discharge of his mandate the Special Representative is guided by three fundamental considerations: (a) to try to comprehend fully the post-genocide trauma that has affected Rwandan society since 1994; (b) to try to help and encourage the country and all its people in their efforts to recover from this tragedy; (c) to be as objective and constructive as possible in proposing recommendations to address real problems in the field of human rights.

II. MISSIONS OF THE SPECIAL REPRESENTATIVE

4. The Special Representative undertook four missions to Rwanda in 1999, in pursuance of the objectives of his mandate. In each case, he was accompanied by a special assistant and by the Desk Officer for Rwanda of the Office of the High Commissioner for Human Rights (OHCHR). He travelled again to Rwanda in January of this year. The Special Representative wishes to express his deep gratitude to Mr. Iain Guest, his Special Assistant, who greatly helped him in the preparation of this report, and for the support provided to him by OHCHR and, in particular, by the Desk Officer.

5. The Special Representative also wishes to express his deep gratitude to the Government of the United Kingdom of Great Britain and Northern Ireland for providing support to his mandate. In addition, he would like to thank the United Nations Resident Coordinator and the United Nations Development Programme (UNDP) Resident Representative in Rwanda, and all the staff of that office for the most valuable support which they extended to him and his team on all occasions.

6. In collecting information during the five visits for the preparation of the present report, meetings were held with a wide range of personalities from various sectors of Rwandan society: branches of the Government, civil society, members of diplomatic missions, members of United Nations agencies, as well as national and international non-governmental organizations. These interlocutors included the President of the National Assembly, the President of the Supreme Court, the Prime Minister, the three successive Ministers for Foreign Affairs, the Minister of Justice and his Permanent Secretary, the current and former Ministers of Gender and Women in Development, the Minister of State in the Office of the President, the Minister of Social Affairs, the Special Adviser to the Vice-President, the Minister of Internal Affairs and his Permanent Secretary, the Chief Prosecutor, the Military Prosecutor, the President of the Rwandan Bar Association, the Presidents of local human rights NGOs, notably of the Committee of Human Rights Leagues and Associations (CLADHO), the League for the Promotion and Defence of Human Rights in Rwanda (LIPRODHOR), the Association rwandaise pour la défense de droits de l'homme (ARDHO), l'Association des volontaires pour la paix (AVP), the Rwandan Association for the Defence of Human Rights and Freedoms (ADL), Kanyarwanda and the League for the Rights of People in the Great Lakes Region (LDGL), representatives of Avocats sans Frontières (Lawyers without Borders), the President and all members of the National Human Rights Commission, the Chairperson and the Executive Secretary of the Commission for National Unity and Reconciliation.

7. The Special Representative and his colleagues travelled widely in Rwanda in preparation for this report. They met with officials and returning refugees in the north-western prefectures of Ruhengeri and Gisenyi. They visited new settlement villages (imidugudu) in the prefectures of Kibungo and Umutara. They also visited two prisons in the prefectures of Butare and Kigali rural, the detention centre for children at Gitagata, and several communal detention centres (cachots).

III. GENERAL OBSERVATIONS OF THE SPECIAL REPRESENTATIVE

A time of transition

8. The Special Representative is gratified to be able to report that Rwanda is stepping out from the shadow of genocide. Although this terrible crime must never be forgotten, the Rwandan people are taking vigorous steps to ensure that it no longer impedes the development of their nation. This report describes a country that is growing in confidence and laying the foundations for a democratic society. As the Government of Rwanda acknowledges, this must include a central place for human rights. In a meeting with the Special Representative, a government minister described human rights as the Government's "raison d'être".

9. The emergency is receding, giving way to new challenges which promise a new relationship between Rwanda and its international friends. Bilateral donors are talking of partnership rather than aid, aware that this involves responsibilities on both sides.

10. The United Nations system also has much to offer Rwanda in this period of transition. Relations between the United Nations and Rwanda have been strained since 1994, but the Special Representative hopes that a new start can be made following the publication

on 15 December 1999 of the Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (also known as the "Carlsson Inquiry"). That the United Nations had failed to prevent, and then to stop the genocide was a brave admission by the Organization which, however, needs to be followed up by concrete support. A start could be made by contributing to reparation for survivors of genocide, as recommended by the Independent Inquiry.

Laying the foundations for democracy

11. Since the Special Representative's last report to the Commission (E/CN.4/1999/33), the National Assembly of Rwanda has extended the period of transition from genocide to democracy by another four years. The Special Representative feels bound to observe that during this extension period, the international community will be closely watching the Government's efforts.

12. In this respect, the Special Representative is pleased to note several positive developments over the past year. These include successful local elections; the establishment of two new commissions (on human rights and on national unity and reconciliation); the first steps towards drafting a new constitution; a new law to professionalize the civilian police force; a revision of the 1991 press law; the adoption of a law allowing women to inherit property; a growing commitment to good governance (as manifested in the arrest of several prison administrators on charges of corruption); increasingly effective supervision by parliament over all aspects of government; and a proposal to use traditional justice (gacaca) in an effort to speed up genocide trials. Taken together, these initiatives signal a clear movement towards democracy and reconciliation.

Creating a culture of human rights

13. In spite of the progress, there is not yet a full "culture" of human rights in Rwanda. This must start with dialogue and debate - and dialogue requires accurate regular information from Rwanda's human rights groups. The Special Representative is gratified that these groups are emerging from a period of self-doubt and disorganization. Working with other partners in Rwandan civil society, they should be encouraged to monitor the entire range of human rights. But this will require a strengthening of their management capabilities. They should also benefit from the establishment of the new, independent National Human Rights Commission in May 1999. The Commission's seven members are already moving to fulfil the high expectations placed in them by civil society.

Structural challenges to human rights

14. Looking further ahead, Rwanda faces a series of structural challenges to human rights. One is freedom of movement. Rwandans are linked to their communes by a system of compulsory registration and identity cards. This restricts freedom of movement. It also serves as a barrier to a flexible labour market and economic development, as the 1998 World Bank report on poverty in Rwanda attested.

15. Freedom of opinion and expression is linked to a free press. The media has still not recovered from the perception that it aided and abetted the genocide, but its importance in ensuring transparency cannot be questioned. This report contains several observations on how to ease obstacles to an effective press while ensuring that it remains responsible.

Changing attitudes

16. The Special Representative wishes to commend the Government for its efforts to eradicate the ethnic tensions that have proved so destructive in the past. Ethnic labels have been removed from ID cards, key government posts are shared between ethnic groups, thousands of soldiers from the former military (ex-Forces armées rwandaises, FAR) have been integrated into the national army. The National Unity and Reconciliation Commission is leading the attempt to expunge ethnic ideology from community life.

17. These are commendable steps, but it will take more to transform Rwandan society. Many talk of the "blind obedience" that was exploited by those who planned the 1994 massacres. The best antidote to this is a spirit of independence at the community level. Civic associations - particularly those working for human rights - are starting to show the way, drawing on the resilience that is helping Rwandans to recover from genocide.

The regional dimension

18. Human rights in Rwanda are inextricably linked to security throughout the Great Lakes region. Traditionally, tension in Rwanda's neighbours has spilled over into Rwanda, in the form of rebel incursions or a heavy-handed response by the authorities.

19. The Special Representative is concerned at the deterioration in Burundi, and the apparent strengthening of extremists in that country. He is also deeply concerned that Rwandan interahamwe are reportedly receiving training and arms in some African countries. It will be hard to secure the withdrawal of Rwandan forces from the Democratic Republic of the Congo as long as the interahamwe continue to be perceived as a threat.

20. The signing on 10 July 1999 of a peace agreement in Lusaka, and its subsequent adoption by opposition groups in early September, is an important step towards ending the fratricidal war in the Democratic Republic of the Congo. The peace process has been uneven, but military observers are being deployed in the Democratic Republic of the Congo and a respected international facilitator has been appointed to the peace process. The special session of the United Nations Security Council on 26 January will have further focused efforts on securing peace.

21. Among the root causes of regional tension, the Special Representative would draw attention to the pernicious tendency to deny nationality on the basis of political motives. As well as violating international law, this provokes refugee movements. It must be firmly on the agenda of peace talks.

22. The Special Representative also wishes to commend recent efforts by civil society to support regional peace efforts. These include a meeting in Kigali on nationality, organized by

the League for the Rights of People in the Great Lakes Region (LDGL); a meeting of indigenous NGOs from the region convened by Rwanda's Batwa people; and a round table on human rights education in Kigali that brought together NGOs from Burundi, the United Republic of Tanzania, the Democratic Republic of the Congo, Uganda and Kenya. In another important development, the Rwandan Womens' Committee for the Lusaka Peace Process, comprised of women from civil society, held its first meeting in Kigali in December. The Committee was to reconvene in Washington in February with support from the United States Government.

23. Such initiatives use human rights to break down distrust and build regional links between elements of civil society. In so doing, they underpin the peace process. The Special Representative commends the organizers, and the donors that provided support.

24. In sum, he would reiterate his permanent concern: promotion and respect of human rights in the Great Lakes region of Africa, including Rwanda, can only succeed in the long term if a lasting regional solution is found to the conflicts in the area.

IV. COOPERATION WITH THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

25. The Special Representative is pleased to observe and support the steps which the Office of the High Commissioner for Human Rights, on the one hand, and the Government of Rwanda, on the other, have taken to safeguard the primacy of human rights in Rwanda. As will be recalled, the Special Representative has underlined the serious problems caused by the departure of the United Nations Human Rights Field Operation for Rwanda (HRFOR). Both parties acknowledged their inability to reach agreement on the issue of "monitoring" human rights in the country. They did, however, agree that more emphasis needed to be placed on capacity-building, technical cooperation, training and education.[2]

26. The Special Representative is pleased to report that an uninterrupted dialogue has resulted in concrete measures by the High Commissioner. These include supporting the training of members of the National Human Rights Commission in Strasbourg, and the successful holding of the round table held by the Commission in Kigali (12-16 October 1999). The Special Representative hopes that both sides will soon work out a new memorandum of understanding, opening the way to further projects for technical cooperation.

27. In this context, he would also underline that Rwanda can well benefit from the implementation of the 1998 global memorandum between OHCHR and the United Nations Development Programme (UNDP). Many of the proposals in this report need follow-up, implementation and supervision by the United Nations system in Rwanda, and all of this falls most naturally to UNDP. As of writing, however, the UNDP Unit on Justice and Human Rights comprised only one international staff member. A possible role for the Unit is addressed below in the section on recommendations.

V. SECURITY IN THE NORTH-WEST AND THE REPATRIATION OF REFUGEES

Security

28. Security has been the key to human rights in Rwanda since 1994. There is, first, the direct link between security in the region and human rights in Rwanda, referred to above. Fighting diminished in the eastern Democratic Republic of the Congo in 1999, and this meant a reduction in the number of incursions of armed infiltrators into north-west Rwanda.

29. An exception - hopefully isolated - occurred on 23 December, when armed interahamwe crossed from the Democratic Republic of the Congo and attacked the resettlement site of Tamira, in Muturu commune (Gisenyi), killing 29 persons and wounding another 40. The attack was carefully planned and the victims carefully selected. While the authorities are treating it as a one-off event, it was a clear sign that the interahamwe remain active in the Democratic Republic of the Congo and another reason for bringing peace to that country and ending the threat from the interahamwe once and for all. In one United Nations security briefing in Kigali, it was pointed out that the Tamira attack occurred immediately after an incident near Bukavu (Democratic Republic of the Congo) in which several women were reportedly buried alive by Congolese rebels.

30. The overall improvement in security in the north-west has led to a corresponding decline in alleged abuses by the Rwandan armed forces. This was confirmed by the Special Representative's own mission last August, which found the mood in Ruhengeri and Gisenyi to be noticeably calmer than when he visited in January 1999. In another sign of improved security, delegates from the International Committee of the Red Cross (ICRC) travel virtually everywhere in the north-west without armed escort.

31. But this does not lessen the importance of monitoring by Rwandan and international human rights groups, and of investigations by the authorities. A recent report by the League for the Promotion and Defence of Human Rights in Rwanda (LIPRODHOR) named three military detention centres where civilians are reportedly held. It also reported cases of forced recruitment into the army and even of persons forced into labour on behalf of the army. The Special Representative hopes these reports will be investigated.

32. He also received expressions of growing concern among human rights groups, aid officials and diplomats about the activities of the local defence forces (LDF), said to be formed and armed by villages in order to ensure security. These local militia are unpaid and appear to receive between three and four weeks of basic training. Some are reported to be very young.

33. According to the Minister of the Interior, LDF are answerable to prefects, who are under the Ministry of Local Government, but are trained and armed by the police (Ministry of Interior). They are supposed to report any incident or alleged infiltrator to the local police. The concern is that this chain of command may be too diffuse to ensure proper accountability. Already, there are growing reports of drunkenness, indiscipline and even abuse against civilians.

34. While the formation of militia may be understandable in the north-west as long as the interahamwe is active in the Democratic Republic of the Congo, LDF are expanding rapidly throughout Rwanda. The Special Representative must point out that civil defence forces have caused violations elsewhere and that the interahamwe itself started as a local defence organization in Rwanda. He therefore urges the Government to ensure that the LDF are properly controlled and accountable. It would help to forestall speculation, and even incidents, to have their role investigated and explained clearly by a Rwandan body such as the National Human Rights Commission. Certainly, civil defence is no substitute for a disciplined, professional police force.

35. Security can also be viewed in a larger sense, as a state of mind. In one important discussion, the senior adviser to the President of Rwanda told the Special Representative that the threat to security was no longer sufficiently serious to stand in the way of the Rwanda's transition. This positive development should permit the authorities to deal more confidently with the issues reviewed in this report: the return of refugees; the private ownership of land; freedom of movement, choice and expression; releases from jail. All have been held hostage to security considerations.

Human rights and the humanitarian emergency

36. Over the past three years, human rights and humanitarian concerns have merged in the north-west of Rwanda. This now appears to be changing, as the emergency recedes.

37. The crisis has gone through several stages. In 1998 an estimated 600,000 Rwandans were displaced by fighting in the north-west and moved into camps. Conditions deteriorated to such an extent that an international appeal was launched by the Office for the Coordination of Humanitarian Affairs (OCHA). By June 1999 donors had given $26 million.

38. After the camps were disbanded, the displaced moved into 183 villages under the policy of group settlements (imidugudu). One government study in June 1999 found that 11 per cent of the population were still suffering from severe malnutrition, with the figure rising to 17 per cent in more remote communes. This was attributed to late planting, damage to health infrastructure from fighting, and separation from land.[3] It prompted an extension of the OCHA appeal in July for a further $19 million.

39. The crisis has now improved as a result of good harvests and improved security, to such an extent that OCHA is recommending that the appeal be suspended. A total of $9.8 million has been provided by donors. At the same time, OCHA warns that 90,000 people are lacking basic services in Ruhengeri, and 60,000 in Gisenyi. There is some controversy over whether the policy of villagization is deepening their vulnerability by depriving them of access to land. This is discussed elsewhere in this report.

Return of refugees

40. Rwanda's refugees have long been a visible symbol of Rwanda's divisions, but there are now clear signs that this long and agonizing crisis may be drawing to a close. The number of Rwandans still in exile has fallen from over 3 million to less than 100,000. During 1999, another 38,228 returned to Rwanda from neighbouring countries.

41. The focus of concern remains the eastern Democratic Republic of the Congo and north-west Rwanda. In 1999, 32,087 Rwandans returned from the Democratic Republic of the Congo and this process was carefully monitored by the Special Representative for confirmation that it was voluntary.

42. The Office of the United Nations High Commissioner for Refugees (UNHCR) has re-established an office in Goma, and is able to collect refugees from several collection points and transport them directly across the Rwandan border to the reception centre of Nkamira, near Gisenyi. Based on interviews with returning refugees, UNHCR officials are confident the process is voluntary, and indeed that many more Rwandans would return if they could. Indeed, the Special Representative's mission was told by UNHCR that many Rwandans appear to be held hostage by militia in the Democratic Republic of the Congo. Others report having been forced to work in slave-like conditions on Congolese farms. Between 30,000 and 60,000 Rwandans may be in the eastern Democratic Republic of the Congo. It is important for peace in the region that they be given the chance to return.

43. The reception and reintegration of refugees inside Rwanda has also improved steadily during the year. For the first few months, the refugees were transported by a Congolese group and many were dropped at a centre in Gisenyi town known as ETAG. Here, according to one report, several women and girl returnees were raped by government soldiers in May. There have been no further reports of such incidents since UNHCR took over repatriation and brought the refugees directly from the Democratic Republic of the Congo to Nkamira.

44. There remain other refugee issues in Rwanda. There are some 32,000 persons from Masisi, Democratic Republic of the Congo, in Rwanda, and although some are returning without UNHCR supervision conditions do not yet permit them to return to their homes. There is also movement across Rwanda's border with the United Republic of Tanzania, to the east. According to UNHCR, Rwandans are still reportedly leaving for Tanzania, while refugees in Tanzania are reluctant to return. This needs investigation.

VI. BUILDING DEMOCRACY

Local elections

45. The five-year transitional period for recovery from genocide expired on 19 July 1999. This was extended by the Government of Rwanda for another four years on the grounds that more time is needed to promote reconciliation and complete drafting of a new constitution. This will result in more scrutiny of the process of transition.

46. One important benchmark has already been achieved, with the holding of elections for local Executive Committees in March 1999; 158,864 committee members were elected at the level of cells and of sectors.[4] They are now responsible for matters relating to education, health, social affairs, gender, youth and culture, development, security, information and finance.[5] Representatives from the international community, who formed an unofficial observation team under UNDP, were impressed by the logistical achievement of organizing elections of this magnitude in less than two months.

47. The March elections also provided a foretaste of the elections for gacaca judges, which makes the selection methods particularly important. Candidates were determined eligible on the basis of their education and general standing in the community. There were no political party affiliations, and no campaigning. Each candidate had two to three minutes to speak, and voters lined up behind the candidate of their choice. According to an informal UNDP estimate, the turnout was between 80 and 90 per cent. Often voters waited in line for hours while votes were counted.

48. The involvement of women candidates deserves particular attention. In one commune visited by the Special Representative's mission (Karago in Gisenyi prefecture) only 18 of the 270 local committee members elected were women. This contrasted with another commune, Musambira in Gitarama prefecture, where the Special Representative's mission met with the leaders of a women's organization known as COCOF (Women's Consultative Committee). COCOF has 2,055 individual members and several stood successfully for elections. This resulted in a significantly higher number of women committee members than the national average, suggesting that economic activity by women might translate into greater political representation.

49. The Special Representative also commends the efforts of the Government, supported by UNDP, to provide post-election education and training for elected representatives. The local committees will evolve into important partners of aid agencies.

50. Later this year elections for the post of district mayor (bourgmestre) and other municipal officials will be held. The Special Representative was gratified to hear that political parties and campaigning will apparently be permitted and that the ballot will be secret. This would constitute an important step forward on the road to parliamentary elections in the year 2003.

Parliamentary oversight

51. One of the most encouraging developments of the past year has been the emergence of the National Assembly (parliament) as an independent body, determined to exercise oversight over Government. The Assembly established a commission on corruption, which forced the resignation of three ministers. It has initiated some laws (e.g. on violence against children) and redrafted others. It rigorously questioned ministers during preparation of the national budget. As well as gratifying Rwanda's donors, this insistence on accountability helps to create a foundation for human rights and respect for the rule of law.

52. The National Assembly also played an essential role in the creation of the National Human Rights Commission and of the Commission on National Unity and Reconciliation. It is

now considering a law to establish a commission which will be entrusted with the drafting of a new constitution. The Special Representative had several friendly meetings with the President of the National Assembly and members of his parliamentary committees and was impressed by their commitment to promoting human rights. The President has since been replaced. It is hoped that his successor will prove equally vigilant.

53. Nine deputies sit on the parliamentary committee on human rights[6] of the National Assembly. Its President is from the human rights community, and in a meeting with the Special Representative he outlined ambitious plans to support human rights groups, visit new settlements, and cooperate with the two new National Commissions (on human rights and on unity and reconciliation). The Special Representative very much hopes that resources can be found to make this possible.

VII. CIVIL SOCIETY AND HUMAN RIGHTS

Civil society in action

54. Civil society plays an essential role in the promotion of human rights. It need not even take the form of organizations. What is needed first and foremost is a spirit of independence, and a determination to make a difference. The Special Representative's mission met many Rwandans who fall into this category. He recalls the chemist in Gisenyi who saw street children sleeping outside her pharmacy and raised donations to open a home (Avorwad). Almost all the children have been reunited with their parents.

55. The Special Representative was also impressed by the Association of Rwandan Journalists which hired a lawyer when one of their members was jailed for accusing a high official of corruption. He applauds the persistence of the survivors of genocide, whose organization IBUKA has a reputation for outspoken advocacy, and of women's initiatives like AVEGA (for widows of genocide) and ASOFERWA (the Association of Rwandan Women). They refuse to accept the unacceptable. They are the best hope for enduring democracy and the protection of human rights.

The National Human Rights Commission

56. The Special Representative notes with great satisfaction that Rwanda now has an active and independent National Human Rights Commission (NHRC) able to take its place in civil society and serve as the country's institutional focal point for human rights. As is known, the Special Representative has strongly supported the NHRC since the start. He now offers his services to help it fulfil its mandate, and the high hopes placed in it by the Rwandan people.

57. The NHRC was established by law in January 1999 and finally constituted on 24 May 1999, when its seven members were elected by the National Assembly from a list of 10 candidates submitted by the Government. The fact of its having been created by a legislative process gives the NHRC considerable authority. The law also gives it a strong mandate by ensuring its independence and calling on it to investigate violations and sensitize and train the Rwandese population in matters of human rights.[7] The Special Representative is pleased to note

that the law recognizes the need to attract the most qualified commissioners, and to ensure their full independence.[8] He further notes that the NHRC budget is placed within the national budge

58. The Special Representative and his colleagues have had many meetings with the commissioners, both in Kigali and in Geneva, and he is impressed by their determination to listen, learn and act. He has also appealed for international support for the NHRC, and is please that the High Commissioner for Human Rights was able to provide funds for the seven commissioners to attend a four-week training course on human rights at the International Institute for Human Rights in Strasbourg. Upon its completion, they visited Geneva and met with the High Commissioner and her staff.

59. The last six months has been a time of consolidation for the NHRC. It organized a successful four-day public round table in Kigali, from 12 to 16 October 1999, with financial and technical support from the Office of the High Commissioner, the UNDP office in Rwanda and the Special Representative. The round table allowed the new members of the NHRC to meet an share views with colleagues from other parts of the world and representatives from the National Assembly and the Government, the Rwandan judiciary and civil society. The Special Representative expresses his appreciation to the Government of Switzerland for financing the publication of the final report of the round table, which has been widely circulated and helped to promote the work of the NHRC.

60. Following the training in Strasbourg and the round table, the NHRC elaborated a work plan up to the year 2002. It is now proceeding along two parallel tracks. On the one hand, the commissioners are refining their own internal procedures, recruiting staff and developing operational guidelines. They have divided responsibilities (social and economic, juridical, promotional and other aspects). As they pointed out to the Special Representative's delegation during meetings in Kigali in January, all this takes time.

61. At the same time, the NHRC is receiving petitions on a wide range of issues, undertaking inquiries, and reaching out to Rwandans. The petitions have come from relatives of people arbitrarily detained or who have allegedly disappeared, asylum-seekers and persons involved in property disputes. They have even included questions about sexual preference, which is a new and sensitive issue for Rwanda. At the request of a Rwandan human rights group, the NHRC traced and found two persons reported to have disappeared in prison. It has also mediated in a property dispute.

62. The NHRC has also expressed concerns at the 18-month duration of the new extension on preventive detention and submitted these in writing to the National Assembly. The commissioners will continue to press for improvements in the law. In an effort to promote human rights and spread the word about their work, they have visited 11 of the 12 prefectures and met with hundreds of representative individuals from all walks of society.

63. The Special Representative is gratified at this progress. He is also gratified by the interest shown by donors, who - at his request - have organized an informal working group in Kigali to periodically review their cooperation with the NHRC, in conjunction with the UNDP Justice and Human Rights Unit. At the same time, however, it was made clear to his mission during a visit to Kigali in January that some donors would like to see a greater sense of urgency

in the NHRC, more concrete results and a clearer sense of priorities, these include such issues as alleged compulsory recruitment of young people into the armed forces, villagization and local defence forces. In general, the donors clearly need to be better informed about the NHRC's activities and its interaction with Rwandans. In addition to its annual report (due out in March) the NHRC intends to issue regular written bulletins.

64. The Special Representative understands both perspectives. He agrees with the NHRC that it cannot embark on sensitive human rights investigations without clear operational guidelines, and that commissioners need time to develop programmes both individually and as a team. On the other hand, he also understands the donors' desire to see results and receive realistic project requests. The Commission has been allocated by the Government a budget of around $1.8 million for this year. In seeking more funding from donors, it has to address their concerns.

65. At a meeting of the donors and representatives of the NHRC held on 21 January 2000, it was agreed that cooperating on a specific project would help to build a working relationship. The NHRC suggested a study setting out who is doing what in the field of human rights, with a view to identifying gaps and needs. This proposal will now be explored by the NHRC and bilateral donors. Once the relationship gathers momentum, there will certainly be no shortage of suggestions for the NHRC. Several were made to the Special Representative's delegation in January and are included in his recommendations.

66. The Special Representative is convinced that technical assistance would greatly help the NHRC to develop projects. He welcomes UNDP's offer to fund for the NHRC two national staff for a 12-month period and one international consultant for an initial four-month period. Hopefully, these persons can be recruited quickly. He has also suggested that the Irish NGO Trocaire, which has a programme of capacity-building with Rwandan human rights groups, make its expertise available to the NHRC.

67. The Special Representative remains ready and willing to help the NHRC. The Commission is evidence of Rwanda's commitment to the development of a culture of human rights and the ending of a tradition of impunity. He urges and encourages the international community to support its efforts.

Rwandan human rights groups

68. One of the Special Representative's principal goals is to encourage local human rights groups. It has been a difficult decade for these organizations. Most were established in the early 1990s, and all lost members to the genocide. They enjoyed a revival during the presence of the Human Rights Field Operation in Rwanda (HRFOR), which offered them valuable support. With the departure of HRFOR they slipped into disputes over internal problems, alienating their donors.

69. The Special Representative is relieved that these human rights defenders are showing signs of renewed vigour and confidence. He said as much at a meeting with representatives from eight organizations at the UNDP office in Kigali last August, praising them for their work and

suggesting ways that they could cooperate with the NHRC and receive its support. But this would depend on improving their capacity, which still suffers from several serious weaknesses in the following areas.

70. **Monitoring**. All of the human rights groups are based in Kigali, except the LDGL. Few, if any, are able to report regularly on events outside the capital. There is also little consistency between their monitoring methods.

71. This is beginning to change. Three groups have developed urgent action procedures. Increasingly, they are working together on sensitive cases. LIPRODHOR has the most extensive system of monitoring. Its staff has visited almost half of the country's 154 cachots. It also monitors the genocide trials and produces a professional newspaper (Verdict) on the trials. With funding from the Government of the Netherlands, LIPRODHOR also follows up on persons released from jail. By September 1999, it had interviewed 982 out of the 4,247 persons released.

72. This kind of monitoring provides essential guidance for the Government and donors. But it requires a greater capacity, and it has to be said that even LIPRODHOR's monitoring is weak compared to that of other countries. In an effort to strengthen its monitoring, LIPRODHOR held a training session for its teams in the north-west during the Special Representative's August visit, with funding from the Government of the Netherlands. The Government of Switzerland has purchased a vehicle that allows ADL to conduct urgent interventions. The Government of Canada has provided the funds for Verdict. Such projects are low in cost but important, because they strengthen the monitoring capacity.

73. **Money and membership.** Rwandan human rights groups are totally dependent on a small group of international donors for support, and this is unlikely to change. Any attempt to levy fees on members will merely discourage new members. The Special Representative would like to commend the donors that support these groups. But he would also ask that they build more institutional costs into projects and design projects for longer periods than six months (the average). These groups need core funding if they are to thrive.

74. The Special Representative would also draw attention to the importance of donor coordination. He heard that groups "shop around" for support and that a clear picture of their needs never quite emerges. This calls for closer coordination between donors, and could point to a role for the Justice and Human Rights Unit established by the UNDP in Kigali.

75. **Acting on information.** Even when groups receive accurate information, they often lack an institutional channel for it. (Some have developed personal relationships with individual ministers, but these are broken when there is a Cabinet reshuffle.) It is hoped that the National Human Rights Commission can play such a role.

76. In their meeting with the Special Representative, several groups emphasized the importance of human rights education. The Special Representative concurs, but notes that this also requires a technical capacity. LIPRODHOR has the ability to prepare radio spots, but has been refused permission to run its own radio station. Opening up the airwaves would benefit human rights.

77. It also emerged that many human rights groups do not have basic human rights texts, and are also often the last to receive important government papers and draft laws. Few, if any, read the Special Representative's reports. This is a commentary on their isolation from the flow of information. On the Rwandan side, the umbrella organization CLADHO would be well placed to coordinate information-sharing in cooperation with the National Human Rights Commission.

78. **Management.** Without any doubt, the single greatest impediment to the development of a strong human rights community is weak management and administration. These groups are also heavily - even excessively - dependent on individuals. Executive secretaries find themselves managing several projects, running the office, heading field missions, briefing visiting missions, attending conferences and even travelling abroad. If an executive secretary is replaced or resigns in difficult circumstances, as recently happened to one prominent organization, it can prove profoundly unsettling.

79. The Special Representative hopes that donors will make a concerted effort to improve the management capacity of Rwanda's small but energetic human rights community. In October, Trocaire held a workshop for nine human rights groups to help them identify needs and plan a programme of capacity-building.

80. One new and noteworthy element is information technology. This offers obvious benefits to small groups that are starved of information and need to communicate. Several Rwandan human rights groups have access to e-mail but find it hard to exploit. Part of this is due to the limited service offered by Rwandatel, which has a monopoly as the only service provider, part is due to unfamiliarity with new information technology.

81. The Special Representative hopes that the Government will deregulate and permit the development of independent service providers, which would allow civic associations and individuals better access to the Internet. He would also strongly urge that private radio stations be permitted to transmit. He knows of at least one human rights group that has prepared radio programmes on human rights, but has been prevented from transmitting.

Freedom of the press

82. Rwanda's press has a crucial role to play in Rwanda's transition, but first it needs to be able to operate in a climate free from intimidation. This will require legal safeguards, financial viability, and training in professional reporting.

83. All these are struggling to emerge in Rwanda. This was shown last year when a journalist wrote an article charging that money had been diverted in a sale of helicopter parts. He was arrested and jailed without charge. After being released provisionally he wrote another article complaining of corruption in the very jail where he was detained. It is deplorable that a journalist can be jailed for protesting against corruption, but heartening that he had the courage to express his views. Furthermore, the Association of Rwandan Journalists also showed its independence by protesting on his behalf.

84. Large amounts of foreign aid have been spent on Rwanda's media since 1994, but little has permeated to the level of the working press. Most of the 15 titles have a small readership. As of August, none had its own printing press.

85. There is still much that donors can do short of outright subsidies. For example, the United Kingdom has paid for the construction of newspaper kiosks around the country and funded a vehicle for the Association of Rwandan Journalists. Canada has supported LIPRODHOR's newspaper Verdict, which offers professional writers the chance to cover genocide trials and has made trials more transparent. Sweden has provided funds for the Association to open a press café, and the United States has given computers. UNESCO has organized training sessions for journalists. These small initiatives nurture civil society and a free press.

86. The Special Representative would also like to refer to the new press law currently under discussion in the National Assembly. One provision requires that every media title be owned by a commercial enterprise. Considering that none of the 15 titles is currently commercial, this provision could bar small publications being issued by civic associations. This would be most regrettable and could lead to a monopoly of ownership.

The Batwa

87. One relative newcomer to Rwandan civil society deserves mention. Historically, the Batwa have always been Rwanda's third ethnic group. With the removal of ethnic labels from ID cards, they are no longer officially designated an "ethnic minority". Nevertheless, they remain a clearly identifiable part of Rwandan society which needs to be integrated in order to reduce its vulnerability to isolation, incomprehension, poverty or discrimination. Such a deliberate step by the Government will certainly put an end to the Batwa's sense of insecurity and marginalization.

88. There are some promising signs. Prior to 1994, there were only two Batwa organizations. Today there are seven. This drive to organize and take control of their own lives is the essence of civil society and should be supported. The Government is commended for making this possible. However, the seven groups need, first, to cooperate, coordinate, and seek registration as NGOs - singly or together. Second, they need to be integrated into the human rights debate and introduced to donors in Kigali. (At present, most of their support comes from the minority rights and indigenous networks in Europe.) Hopefully, this will lead to projects. For example, they need technical advice on how to improve the quality and marketing of Batwa pottery, which is a mainstay of many Batwa families.

89. This process need not be presented as a demand for the rights of the Batwa minority - an inappropriate approach in the Rwandan context - but rather as the realization of economic and social rights of an underprivileged group.

NGO registration

90. After five years, the Government has approved a draft law for the registration of non-governmental organizations. This is long overdue in that many NGOs have been operating

in a legal and financial limbo. On the other hand, one human rights group expressed concern that the law could threaten their independence and impose a heavy administrative burden by requiring that all NGO representatives be approved by the Ministry of Justice, and that any modification of statute be submitted to the Ministry.

91. The Special Representative would also be concerned at such a requirement. He would point out that independence makes civil society effective, and so increases its value as a partner to Government.

VIII. THE CRISIS IN RWANDA'S PRISONS

92. This year's report devotes considerable attention to detention and the rebuilding of Rwanda's judiciary. It is hard to comprehend that around 120,000 detainees are still crowded into jails five years into the transition - many without being charged. The Special Representative sees this as a critical test of the international community's ability to respond to genocide with the rule of law.

93. The Special Representative understands the dilemma that faces the Government. It has been explained many times. Put simply, the perpetrators of genocide must be punished - but Rwanda's judiciary was virtually destroyed in the genocide. In the meantime, suspects must remain in prison, if only for their own safety. This impasse has blocked a solution for five years.

94. The Special Representative is pleased to report that he sees the possibility of a breakthrough in this intractable and dangerous problem. There is, first, a new note of realism in his discussions. Government ministers agree that prisons are imposing an impossible economic burden - taking 4 per cent of the national budget annually. They understand the damage that is being done to Rwanda's commitment to human rights, and to national reconciliation.

95. The Government has therefore undertaken a series of bold moves which strongly merit international support. The Ministry of the Interior acquired the direction of prisons under a government reorganization last year, and will shortly take over the running of the communal detention centres (cachots). A new law on prisons has been drafted, and new prison regulations will be published when the law is adopted this year. The Ministry of the Interior is taking over the judicial police inspectors, who carry out the investigations, and incorporating them into an expanded criminal investigation division. The Minister himself has made a personal commitment to improving prison conditions. All this represents progress. It is particularly gratifying that the Government is prepared to allow regular inspection of prisons. This will increase international confidence.

96. The Special Representative would also like to commend the Government for restraint in carrying out executions. The last executions occurred in April 1998, and he has not been informed of plans for further executions. This will reassure Rwanda's friends. At the same time, of course, the number of those condemned to death continues to rise. It stood at 348 at the end of 1999. Eventually this will have to be resolved.

another who strives to do better. They should be rewarded by the international community. There can be no development in Rwanda's communes as long as anarchy reigns in the communal cachots.

107. **Prison administration.** The Special Representative is distressed that conditions in Rwanda's prisons continue to violate the basic norms. At the same time, he applauds the efforts of the Ministry of the Interior to improve prison administration and put an end to corruption. Last year, 9 of the country's 19 prison directors were dismissed and jailed on charges of corruption. Several are suspected of using prison labour to build extravagant houses.

108. During a visit to Kigali Central Prison, the Special Representative was told that the supply of medicine was two weeks behind schedule - at a time when malaria was widespread and a mysterious outbreak of "trembling" had broken out among female detainees. Part of the problem was bureaucracy: the prison administration has to send a written request to the Ministry of the Interior, which then passes it on to the ICRC. In other words, even prison secretaries have a critical role to play in improving prison conditions.

109. **Training prison guards.** It is the guards who come into contact with prisoners on a daily basis that are most in need of training. Once again, this is linked to the wider problems facing the judiciary. Many prisons are very short-staffed. (The prison of Rilima, in the prefecture of Kigali rural, had 17 guards for a prison population of 12,000 last August.) Most guards are so poorly paid that they are virtually forced to rob detainees.

110. Penal Reform International (PRI) trained 400 prison guards last year, but months passed before they could be deployed - either because of slowness in vetting their backgrounds or because they lack training in the use of firearms and crowd control.

111. The Ministry of the Interior proposes to establish a training centre for prison guards within an existing training facility for police at Gishari, in Kibungo prefecture. The Special Representative strongly endorses this proposal and hopes that it will attract funding. He would also support the Ministry's plans to professionalize and restructure the civilian police in Rwanda. The relevant law was passed by parliament in October.

112. **Community work for prisoners.** During a visit to Kigali Central Prison, the Special Representative was able to see the benefits that come from giving prisoners the chance to work. The project is run by PRI, which operates in eight prisons. At Kigali Central, 1,000 prisoners are permitted to work in fields and in a carpentry workshop where they make furniture. Seventy per cent of the profits go to the Ministry and the rest are reinvested in the jail. The prisoners themselves receive a monthly stipend with which to purchase food.

113. Initially, Rwandans resented the fact that people suspected of having committed genocide ("génocidaires") were receiving payment. But PRI has made it clear that the alternative is slave labour, which would of course be unacceptable. The PRI model could also provide an important foundation for gacaca, which will make extensive use of community service, but first it has to be extended to all jails. In Kigali Central, only a sixth of the prisoners are permitted outside. Regrettably, none of the 670 women prisoners has this opportunity, a clear example of

discrimination. The Special Representative was gratified to be assured, during the latest mission of his team to Rwanda in January, that this will be rectified and equal opportunity will be afforded to male and female prisoners.

114. **Prison discipline.** The authorities face a major dilemma in enforcing discipline in prisons. On the one hand, security inside the prisons has to be left to the prisoners themselves: given the numbers, there is no alternative. On the other hand, this opens the way to abuse and mafia-like activities within the prison walls. Most prisons even have their own cachots, where "offenders" are detained.

115. As part of his personal crusade to improve prison conditions, the Minister of the Interior has let it be known that fighting, homosexuality, and the use of drugs will not be tolerated. During a visit to one prison he ordered prisoners caned for homosexual acts, and arrested one government supplier of food who had delivered rotten beans.

116. The Special Representative understands the motivation, but must also caution that any disciplinary measures must be in accordance with the law. The Minister himself acknowledged that the issue of sexual preference is a new one for Rwanda and needs careful review; corporal punishment might not be appropriate. On the issue of health, the spread of HIV/AIDS within prisons must of course be contained, and the Special Representative applauds the Ministry's plan to set up dedicated units within each prison. He also points out, however, that the risk of AIDS/HIV infection is greatly increased by overcrowding, where male and female prisoners are not separated, and where minors are detained with adults. Improving conditions is the best form of prevention.

117. **The detention of children.** The involvement of children was one of the most shocking aspects of the genocide. Some killers were as young as 10. Most were influenced by adults, but some acted alone and even directed other killers. As a result, there is strong pressure to treat them like normal criminals. At the end of 1999, 4,454 children were in detention in prisons and cachots, subjected to the same vagaries as adult detainees. According to UNICEF, only 30 per cent had completed files. Many were incarcerated with adults - in clear violation of the Convention on the Rights of the Child which Rwanda ratified in 1991. (Only 6 of the 13 prisons have separate wings for minors.) Perhaps most alarming, over 450 children have been formally cleared of involvement in the genocide but remain in detention. Only 196 children were released last year.

118. Most of the detained children were over 14 at the time of the genocide, but several hundred were younger. Under Rwandan and international law, the legal age of responsibility is 14, which means that all those falling in the latter category are illegally detained. At the same time, there is opposition to their unconditional release. In an effort to break the deadlock, UNICEF has been supporting a centre at Gitagata (in the prefecture of Kigali rural), where suspected génocidaires who were under 14 at the time of the genocide are taken and rehabilitated before returning to their families. Since it opened in 1995, 297 children have passed through the Gitagata centre.

119. The Special Representative's delegation visited Gitagata in January, and was impressed by the facilities. While far from luxurious, they allow for exercise, education and medical treatment - none of which is available in prison. Only four children have tried to escape in the four years that the centre has been open.

120. The main goal of rehabilitation, according to officials, is to make the children understand "the difference between good and evil". It is left to instructors, who work with groups of about 20, to decide when this point is reached. Initially, it took over two years, today it is less than a year. Once a child is deemed fit to return home, the local branch of ASOFERWA prepares the ground for the release with the community. ASOFERWA has managed to follow up 100 of the 297 cases, and found no instance of reprisals.

121. The Special Representative fully supports the Gitagata initiative. Indeed, he would urge the Government to make more use of the centre and release more children from prison. Gitagata now holds about 170, but could easily take 400 - which is approximately the number that the Ministry of the Interior would like to move from prisons. This should be expedited as a matter of urgency. It may mean providing Gitagata with more dormitories, mattresses, beds, food rations and staff.

122. At the same time, Gitagata can only be one component in a concerted push to resolve the problem of detained children. The Government would earn the gratitude of the international community by treating detained minors as a priority, by separating them in prison, by completing their files, by bringing forward their trials, and by releasing those without a case. UNICEF has pleaded for months for this to happen - but to no avail.

123. **Releases.** The best way to ease overcrowding is by releases. The question is how to accelerate releases in a manner that is compatible with justice and does not provoke protests from local people. This is one of the goals of the proposed traditional justice (gacaca).

124. There was fierce resistance when the Government announced, on 6 October 1998, that it planned to release 10,000 prisoners who had no judicial files. Survivors protested that this was a denial of justice and there were reports of acts of violence against individuals. Some even sought refuge back in the prison. Even when they were not directly targeted, those released found it hard to reintegrate. One analysis by LIPRODHOR found that some were denied identity cards and the right to work. This was particularly difficult for those who had been disabled in prison. As a result, the Government turned to a more low-key approach. The local authorities try to prepare opinion in the village before an individual is released. A recent LIPRADHOR report suggests that this has resulted in a steady decline in reprisals, which should encourage more releases.

125. The Special Representative's own inquiries suggest that the release of humanitarian cases, and those found to be innocent, can promote reconciliation. Last August, his mission visited the commune of Nyabisindu in Butare, where 40 prisoners had been freed from the cachot, including 20 who had no file. New charges were levelled against 10, who were rearrested; the other 30 were given a document confirming their innocence, and this was used by local leaders to inform local families. Public opinion has been further softened by the fact that prisoners are building houses for widows and orphans, as explained above.

126. The Special Representative urges the authorities, and Rwanda's international partners, to initiate more projects like Nyabisindu, in as many of Rwanda's 154 communes as possible. He also appeals for the release on humanitarian grounds of detainees over 70, the chronically ill, small children, and mothers who have given birth in jail.

127. **Donor cohesion.** It will require a concerted effort by the Rwandan authorities under the direction of the Ministries of the Interior and Justice, with the participation of civil society and the Rwandan National Human Rights Commission, to address the crisis in Rwanda's prisons. Somehow, prisons must be brought into the mainstream of public debate. But this must be matched by a more coherent approach from the international community.

128. The Special Representative wishes to pay tribute to organizations working on the frontline on this crucial issue. By its work in prisons, the International Committee of the Red Cross is implementing the spirit of the Geneva Conventions. Penal Reform International is doing difficult work in distressing conditions. Backing them up are a small number of donor Governments that are deeply committed to the improvement of justice. In some respects, this is a model intervention by the international community.

129. However, it can be improved. Simply put, donors are more committed to the reform of justice than to the crisis of detention. The Special Representative was concerned to hear that PRI's valuable projects were jeopardized when a grant from the European Union took almost nine months to arrive. This meant that the prisoners could not take advantage of the harvest and buy food.

130. There seems to be little donor interest in the Government's plans to train prison guards as part of a broad policy to upgrade and professionalize the civilian police. The Special Representative commends the Governments of Uganda and the United Republic of Tanzania for training Rwandan police officers, and the Government of the United Kingdom for providing human rights training to police. Tanzania, Kenya and Malawi have also offered to train prison guards, but the numbers involved are small and they need support.

131. The reticence of donors is most marked when it comes to working with the Ministry of the Interior, and to the construction of new prisons. There is an understandable fear that new prisons would simply invite new prisoners. In one example, the ICRC agreed to support the construction of a new prison at Nsinda on condition that it held no more than 5,000. Last August it held 12,500.

132. This makes donors wary. But they cannot ignore the fact that the Ministry is now a major player in human rights, and that more prison space will be needed regardless of gacaca. Even with mass releases, optimists predict a prison population of at least 60,000 by the year 2005, which, in per capita terms, would still be one of the highest in the world. Prisons - and detention - must be part of a comprehensive solution.

133. Donors seem willing to support the reform of justice, while remaining reluctant to put money into a system of detention that clearly does not meet minimal standards. The Special Representative urges donors to reconsider their position in order to break this vicious circle which perpetuates unacceptable conditions in prisons. More serious, it virtually guarantees that

detention will undermine reconciliation and complicate Rwanda's recovery. It is time to turn Rwanda's prisons from a symbol of abuse and revenge into an instrument of law and order.

IX. THE JUSTICE SYSTEM

134. The overcrowding in Rwanda's prisons is due primarily to the slowness of the justice system in processing cases and completing trials. But the justice system itself is overwhelmed by the number of people in prison. Here is another vicious circle.

135. The proposal to establish a new system of community justice (gacaca), which is discussed below, will ease some of the pressure. This is because the gacaca system will process three of the four categories of genocide suspects established by the 1996 Basic Law on genocide leaving only the first category to be prosecuted under conventional justice. (These are persons who planned or incited genocide, committed acts of premeditated murder or acts of sexual torture.) This would still leave the conventional justice system with a huge workload. There is no precise figure, but the Special Representative heard estimates ranging from 5,000 to 25,000. Coupled with common law cases, it is clear that Rwanda's judiciary will be under pressure for years to come.

136. **The genocide trials.** By 30 November 1999, 2,406 persons had been tried before a special genocide court, out of the 121,500 in detention. Of these, 348 (14.4 per cent) were condemned to death, 30.3 per cent to life imprisonment, 34 per cent to jail terms of between 20 years and one year, and 19 per cent acquitted.

137. There is much to applaud in this process. Trials are closely monitored and found to conform with international standards. The Danish Centre for Human Rights has trained Rwandan defenders, and defence lawyers are provided by Avocats sans Frontières. This has pushed up the rate of acquittal. The rate of death sentences continues to decline.

138. But the rate of processing génocidaires is still lagging far behind the numbers detained. Under the Rwandan Penal Code, a suspect is supposed to be served with a writ within 48 hours of arrest and appear before a judge within five days. These safeguards were suspended for genocide suspects in 1996. The suspension was extended in 1998, and again extended for another 18 months on 31 December last year. This was regrettable, but there was no real alternative. By September, an estimated 40,000 prisoners were still without files, let alone having appeared before a judge. The authorities made a big push to meet the end-of-year deadline, but the hearings became so curtailed as to become a formality, instead of a legal safeguard. Faced with a choice between a mass release that would have provoked a backlash and been a meaningless exercise, the authorities decided to extend the emergency regulations.

139. It is crucial for Rwanda's reputation that these emergency regulations do not become permanent. Indeed, the sooner they can be lifted, the better for the rule of law in Rwanda. The Special Representative applauds the National Human Rights Commission for pressing this issue with the National Assembly as part of its monitoring of the judicial process.

140. **Confessions.** Another casualty of the paralysis in the justice system is the very small number of confessions that have resulted in a lessening of sentence or even acquittal. This is a

warning for gacaca, which will rely heavily on confessions. The 1996 law on prosecutions for genocide provides a range of possibilities for those who confess. If implemented, these provisions would undoubtedly help to reduce overcrowding in the prisons.

141. According to the Minister of Justice, over 15,000 have confessed. The Special Representative was himself told by prisoners in the Kigali prison that 964 inmates (out of 8,549) were prepared to confess. Yet, according to the Citizen's Network, which is helping the Government to process confessions, only 65 confessions had been acted upon by March 1999, so slow and cumbersome is the process of hearing and review. (Updated figures have not yet been received from the individual prosecutor's offices - another indication of their workload.) The reason for this is that to qualify for leniency, a prisoner has to name accomplices, each of whom has to be investigated. As a result, this supposed "fast track" may even add to the workload.

142. The Ministry of Justice and the prosecutors are stretched to the full by preparations for gacaca, but the Special Representative is concerned that no government body has responded to an invitation by Citizen's Network to discuss the failure of the confession process. Clearly, confessions have a role in a comprehensive solution.

143. **Blockages in the justice system.** The Special Representative would like to commend international NGOs like Citizen's Network, and donor Governments that are helping to rebuild Rwanda's justice system. Danish Legal Aid is furnishing prosecutors' offices (parquets) with essential support (including transport), training judges, and working with judicial police inspectors. Avocats sans Frontières is training lawyers to take on the deeply unpopular cases of suspected génocidaires and also representing the victims. Thanks to such efforts, the number of magistrates has risen to 104 and the country has 55 lawyers and 87 judicial defenders who can argue cases in court. But there remain tremendous obstacles at all levels, from the Supreme Court down to the judicial police inspectors, who carry out investigations and prepare files. The Special Representative's mission met one judicial police inspector in Nyabisindu who had no means of transport - not even a bicycle - with which to prepare 152 files. Witnesses have to come to him.

144. Once again, it is important that donors see the challenge in its entirety, and avoid focusing simply on aspects like the rights of the defence, even if this may be important in their own aid guidelines. Rwanda's Chief Prosecutor is drawing up an inventory of the needs of the parquets. The Special Representative urges donors to assist.

145. **Military justice.** Military justice also tends to attract little attention from traditional aid donors. Yet it, too, must be part of any comprehensive solution. The Special Representative has met several times with the Chief Military Prosecutor, and is gratified by the goals of this institution's mission statement: the promotion of justice; the defence and promotion of human rights; the eradication of impunity.

146. Last year the Prosecutor brought 506 cases before military courts; 345 resulted in prison terms. Most concerned common crimes, but the Prosecutor assured the Special Representative's mission that he remains vigilant to the protection of human rights. In general, he said, discipline was good in the Rwandan armed forces. He noted that 5,000 ex-FAR had been integrated into the army, without any problem.

147. The Prosecutor has held two seminars for officers on the promotion of law and human rights. He would like to hold more, but is constrained by a lack of funds. His office has also published a monthly bulletin with assistance from the United Kingdom Government. These important initiatives help to ensure the accountability of the armed forces, and also keep Rwandans informed. They deserve the support of the international community, and could provide another opportunity for the National Human Rights Commission.

X. GACACA

148. Efforts to improve justice in Rwanda will enter a decisive new phase in the next few months, with the introduction of a radical new system of community justice for genocide suspects known as gacaca.

149. Gacaca is traditional justice, and it has long been mentioned as a component in any solution to the problems of detention, reconciliation and impunity. But it is only in the last few months that it has gone from being an idea to a government policy. The fourth draft of the gacaca law is now before parliament. Trials could start as early as June.

150. The sense of urgency comes partly from the determination of the Government - particularly the Minister of Justice, who has spearheaded the campaign throughout the country - and partly from the fact that there appears to be no alternative. Even the survivors of genocide are coming around. They have reservations about any proposal that could free guilty genocide perpetrators. But it has become increasingly likely that the only alternative would be an amnesty - which would be unacceptable at present.

151. The Special Representative applauds the boldness of the gacaca proposal. Time and time again he was told that "justice as it is practised in the West is not working. We need to find an alternative". At the same time, he would point out - as many others have done - that the gacaca plan is a major gamble. If successful, it could break the deadlock. Equally, it could create an entirely new set of problems. It is up to the Government, and its international partners, to minimize the risk.

152. Gacaca justice will be administered at three different levels of society, starting in the communities themselves at the level of cells. Here, 180,000 judges will be elected by cell assemblies comprising everyone over the age of 18. As well as passing judgement, they will also have the important task of allocating categories to prisoners. Thirty thousand gacaca judges will be chosen at the level of the sectors, and 2,000 at the level of the communes.

153. The law on gacaca will cover the remaining three categories of genocide suspects not covered by conventional justice: persons who committed murder at the order of others, those who caused physical injury and rape acting on orders, and those who destroyed property. The total number affected could amount to 100,000, with as many as 80 per cent in the first category.

154. Trials will take place in public before the entire community. Drawing on the recollections of the accused, the complainant(s), and the villagers, the judges will compile a list

of those who died in the genocide, and of those responsible. The accused will then be judged and sentenced. The innocent will be released, the guilty punished depending on the severity of their crimes.

155. In deciding penalties, the judges will take into account time already served. Those who confess will benefit from a reduced sentence. Convicts will also be allowed to perform community service as part of the sentence. Those convicted of crimes against property will be expected to pay restitution for the damage they caused. If - as is likely - they lack the means, they too will perform community service. The entire gacaca process will come under a newly-created chamber of the Supreme Court.

156. The Special Representative wants to underline the unprecedented nature of this experiment. Traditional justice is widely practised in Africa, but never on this scale and for crimes of this magnitude. Precisely because of this, the draft law attempts to ensure due legal process even while it seeks a "Rwandan solution". This - together with the accelerated timetable - has provoked considerable debate and even controversy.

157. In the first place, gacaca means different things to different people. Some see it as a way to ease overcrowding in the jails, some as a tool of reconciliation, some as a way of establishing the facts of genocide, and some as a way of punishing the guilty. This last raises the possibility that gacaca may increase the prison population because it can be safely assumed that many more suspects will be identified by the accused in the course of public trials. The hope must be that any new arrests will be more than offset by the release of those who are found innocent or have already served out their time, as well as the acceleration of the process.

158. The logistical challenge promises to be daunting. Prisoners are already being moved around the country, so as to put them near the community where they will be tried under gacaca. This has resulted in more overcrowding in some jails such as in Gisenyi and a serious deterioration of living conditions - so much so that the ICRC fears a rise in the death rate.

159. It is not clear where prisoners will stay during the gacaca trials. In principle, it will be in the communities as part of the process of reconciliation. But many cachots are already overcrowded. Nor is it clear whether communities will be able to organize community service projects on such a vast scale. Certainly, this is unlikely without support from donors.

160. The most widely voiced concern is that due legal process will be compromised and the rights of the defendants ignored. Under the latest draft all those accused would be able to appea to the next level (cell to sector, sector to commune, commune to prefecture). Those who maintain their innocence will be allowed to mount a defence, but they will not be able to call on a lawyer. Some fear that this could be another case of justice denied - less abusive than long periods of detention without trial, but abusive nonetheless. Other concerns have also been expressed. Will judges at the cell level, with minimal education, be qualified to take these decisions? How can an acceptable trial be ensured - and will the public nature of the event not lead to intimidation? How can women victims be convinced to give evidence in public about *sensitive subjects like rape*?

161. Weighing these questions, some international human rights groups and even government agencies feel that gacaca could be inconsistent with international standards, and that a way must be found to ensure that a defendant does not stand alone before his accusers. Supporters of gacaca respond that it is not an adversarial system. Rather, it is a process of community decision-making.

162. The Special Representative wishes to state clearly that he supports the principle of gacaca, and applauds the Government's determination to engage ordinary Rwandans in this bold endeavour. Acceptance is growing in the most unlikely of places. During a visit to Kigali jail the Special Representative found that the entire prison population was meeting every day to prepare for gacaca. Overseen by a committee of 12 prisoners selected by the authorities, the prison population was divided according to the cells in which they had lived during the massacres of 1994. During the morning one cell had drawn up a list of 113 deceased victims and of 20 killers, 17 of whom were already in prison, while 3 were still at liberty.

163. The fact is that gacaca will happen, with or without international support. Rwandans bring an impressive determination to tasks on which they set their minds - as witnessed by the feat of electing nearly 160,000 local committee members in the March elections. Already there exists a system of community service (known as umuganda) which every villager is expected to perform.

164. The question facing Rwanda's international partners is relatively simple. Do they grasp the nettle and participate, on the grounds that anything is preferable to the abuse in prisons, or do they hold firm to established legal principles and stay aloof, thus increasing the likelihood that gacaca will fail?

165. It is not the Special Representative's task to take this difficult decision. But he would argue strongly that much can and should be done to minimize the risks. Many of the logistical problems will have to be worked out along the way, and it would greatly reassure donors if the Rwandan authorities were to launch gacaca in a limited number of locations. Kibungo was suggested as one prefecture where the cachots are largely empty. Monitoring by Rwandan human rights groups is also critically important. Public discussion is also the best way of ensuring that gacaca turns into an instrument of reconciliation, rather than revenge.

166. Some donors are already committed. The United States has committed $2.7 million to an awareness campaign, which will include producing a newsletter on the trials for magistrates. But most of the other donors appear to be desperately seeking guidance. The Special Representative would suggest that at the very minimum, they create a liaison unit - perhaps placed within an international NGO - that can act as intermediary with the authorities and develop projects on community service, on which there exists considerable international expertise.

167. There is much else that could be done. Women's groups could draw on their experience from the Balkans, and ensure that gacaca testimony is taken from victims of rape in a sensitive manner. The International Criminal Tribunal could offer its expertise on witness protection and other legal issues - helping to offset the widespread impression that it is only interested in Rwanda as a source of information for its own Arusha process.

168. Such measures may not satisfy those who insist on clear-cut guarantees before gacaca begins, but they might help to alleviate fears and provide some cushion against abuse. The Special Representative is concerned that the doubts of donors will become self-fulfilling. He is also concerned that international support for gacaca be coordinated, instead of piecemeal, and discussed in the context of justice as a whole. Such a discussion should start at the level of capitals. As with the crisis in prisons, it requires political will and political direction.

XI. THE INTERNATIONAL CRIMINAL TRIBUNAL

169. The International Criminal Tribunal for Rwanda, based in Arusha, United Republic of Tanzania, has administered a parallel system of justice since its establishment in 1994. As of 31 December 1999, 48 individuals had been indicted. Thirty-eight were in custody, including one detained in Texas, United States of America. Six have been tried and sentenced. Ten were accused, but are at large.

170. As of writing, relations between the Government of Rwanda and the Tribunal have been severely strained by the November decision of the Tribunal's Appeals Chamber in Arusha to dismiss the indictment against Jean-Bosco Barayagwiza, a founding member of the notorious Radio Milles Collines, which incited Rwandans to genocide in 1994. The Appeals Chamber dismissed the indictment with prejudice to the prosecutor, which effectively barred any future criminal proceedings by the Tribunal. The prosecution asked for a stay of execution, and submitted new evidence. The case was due to be taken up again by the Appeals Chamber on 15 February.

171. The outcome could affect not just the credibility of the Tribunal but its future existence. Rwandans have always found the Tribunal's results hard to justify when set against its resources, and the decision to release Mr. Barayagwiza, apparently on a technicality, provoked a wave of anger. The Government announced that it was suspending cooperation. This paralysed the Tribunal's investigations, since almost all of its evidence and witnesses come from Rwanda. Survivors' groups protested angrily.

172. The Special Representative understands the anger, but he would also recall that the Tribunal's credibility depends on due process and the independence of its appeals process. One expert suggested that in its Barayagwiza decision, the Appeals Chamber was trying to put a stop to the practice of arresting suspects before there is sufficient evidence to make the case. While this may be understandable, given the ease with which suspects move from country to country, it can also lead to unacceptable delays. Mr. Barayagwiza was detained in Cameroon on 27 March 1996 but transferred to Arusha 20 months later, on 19 November 1997. He was only told of the charge against him on his arrival in Arusha. Ninety-six days then passed before he appeared before a judge - six days longer than permitted under the Tribunal's own rules. This sequence certainly makes it harder to argue that Rwanda should speed up its legal process.

173. The question is whether the Barayagwiza decision will be reversed by the Appeals Chamber. If it stands, and Mr. Barayagwiza is acquitted or returned to Cameroon, many Rwandans predict a complete break with the Tribunal.

174. The gravity of this crisis has overshadowed the Tribunal's achievements. It has indicted or arrested most members of the interim Government that planned the genocide in 1994. Investigators have established that the 1994 genocide was a carefully planned conspiracy that was prepared in advance and discussed with all the country's prefects at a meeting in Kigali in April 1994. It is notable that the importation of machetes and other weapons of mass murder rose dramatically in 1994. During a meeting in August, the Tribunal's Deputy Prosecutor said that the Tribunal had prepared an unofficial list of some 500 persons - 200 of whom are known to be in Europe.

175. Even if the crisis over the Barayagwiza decision is resolved, the international community will need to reassure the Rwandans that the Tribunal is as committed to justice and to the victims of genocide as it is to the rights of accused génocidaires. This will require a major effort, not half-hearted gestures.

176. The Special Representative's delegation was told in January that while the Deputy Prosecutor is liked and respected in Kigali (where he is based) his office offers very little practical assistance to Rwanda. It was suggested that the Tribunal open some of its own files to Rwandans and make some of its formidable legal expertise available to help resolve Rwanda's judicial impasse. It would also help if the assets of convicted génocidaires could be blocked.

177. Crimes of sexual violence might be one possible area of cooperation. As noted earlier, the Rwandan courts will soon receive very large numbers of such cases. The Tribunal has secured several precedent-setting convictions for sexual violence and even set up a special unit in Kigali. Extending cooperation to the Rwandans could help to restore the Tribunal's image and advance the cause of justice.

178. As for Governments, cooperating with the Tribunal is the easiest way to make amends for not having prevented genocide in 1994. The Special Representative has been made aware of the reticence of certain Governments, in various parts of the world, to hand suspected génocidaires over to the International Criminal Tribunal. He strongly urges these Governments to enact legislation to cooperate with the Tribunal and investigate suspects on their own territory.

179. Looking further ahead, a place will have to be found where those convicted in Arusha can serve out their prison terms. The Tribunal only provides temporary detention for those on trial. The Security Council has asked Governments to assist, and the Special Representative applauds Mali, Benin and Madagascar for responding positively. Six génocidaires have now been sentenced. Their speedy removal from Arusha would be a reassuring sign of African solidarity in the face of genocide.

XII. RECONCILIATION

180. After five years of refusing to talk of reconciliation until justice is seen to be done, Rwandans now accept that reconciliation must be a national goal in its own right. This is a measure of the country's new confidence, and it deserves recognition from the international community.

181. To help with this daunting task, the Government has established a new National Unity and Reconciliation Commission (NURC). The NURC has quickly made its mark, under its energetic Executive Secretary. As she explained in a wide-ranging discussion with the Specia Representative, the Commission's first aim is to expunge the divisiveness of ethnicity from Rwandan life. With this in mind, the NURC has initiated a nationwide process of consultatio

182. This starts with listening. As the Executive Secretary herself acknowledged, reconciliation cannot be imposed. Indeed, Rwandans have long been working out their own solutions. "Old caseload" refugees who fled in 1959 and returned in 1994 - mostly Tutsis - ha found accommodation with "new caseload" refugees, who fled in 1994 and returned in 1996 a who are mostly Hutu. Returning refugees who found their homes occupied, sometimes by powerful local figures, often consented to live in the same house with these occupants. Sometimes victims had no other option but to live next to suspected killers.

183. This day-to-day drama has produced tensions, but also triumphs. One remarkable example encountered by the Special Representative's mission was the women's organization COCOF (Women's Consultative Committee) in the prefecture of Gitarama, referred to above. COCOF comprises 95 separate associations. Sixty per cent of its 2,055 members are widows genocide victims. The rest are married to suspected killers, who are now in prison. Yet both groups till the fields together, prepare food for the wives to take to the husbands in jail, and st together for election during the March local elections. Reconciliation of this kind is a lesson f the whole world. It belies the image of Rwanda as a country riven by ethnic hatred.

184. Groups like COCOF show that practical solutions of reconciliation should also be entrusted to communities. As an example, the Executive Secretary noted that the number of orphanages in Rwanda had been reduced by two thirds, as orphans from the genocide found foster homes. Financial incentives are given to Hutu families who foster a Tutsi orphan, and vice versa.

185. As with the NHRC, the NURC is focusing on establishing a strong institutional foundation. This requires resources and staff. The NURC has a budget from the Government but at the time of writing it had received limited financial support from donors. The Special Representative therefore also appeals to members of the international community and partners Rwanda to extend their full support, both financial and technical, to the NURC. He applauds t initiative of the Government of Germany to make a technical adviser available to the NURC. This will certainly make it easier to develop projects.

XIII. HELPING SURVIVORS

186. There is a strong moral and practical argument for helping the survivors of genocide in Rwanda. Morally, they should be among the first beneficiaries of any international assistance. Politically, their support and cooperation are essential for the success of crucial measures like gacaca. If they can be convinced, then reconciliation will work.

187. The Special Representative is distressed to report that many survivors feel abandoned b the international community. During his visit last August, he met with the President of IBUK the influential lobbying organization of survivors, and also with the Minister of Social Affairs,

whose Ministry supports 300,000 families of genocide victims. In 1998, the Government voted to make 5 per cent of the national budget available to provide support and assistance to genocide survivors. This produced about $12 million.

188. In spite of this, there is a mood of disillusionment among survivors. The best therapy for the wounds of genocide is that justice should be seen to be done. They are angered by the Barayagwiza decision in Arusha in November, and by the perception that convicted génocidaires live better at the Tribunal than many of their victims in Rwanda. They fear that in the rush to complete trials, their needs will not be sufficiently addressed during the gacaca. They also feel sidelined by Rwanda's own genocide trials. Increasingly, law courts are finding on behalf of civil plaintiffs and levying large fines on those responsible - including the Rwandan State in cases involving former State officials. But neither the State nor individuals have the funds to pay. Although an effort is under way to collect damages from two convicted génocidaires, no case has produced reparations. As a result, such verdicts increasingly lack credibility and further deepen the disillusionment of survivors.

189. Donors in Kigali are increasingly inclined to consider the needs of survivors. This, combined with a worldwide move to recognize victims' rights, could produce some concrete support. The Special Representative would also recall recommendation 13 of the Independent Inquiry, which calls for United Nations support for survivors.

190. Some feel that payments are not the answer and indeed could even be demeaning. Certainly, as the President of IBUKA made clear, survivors are not just interested in money. They want the tone of the debate altered to specifically address their human rights. But this also needs to translate into projects. In one example, survivors are taking the lead in making sure that the genocide is remembered. Unlike South Africa and other countries which have suffered from mass violence, there has been no Truth and Reconciliation in Rwanda. With help from the Government of the Netherlands, IBUKA has compiled the names of 59,000 victims in the prefecture of Kibuye. It is seeking funds to do the same in other prefectures.

191. Among other donors providing practical assistance to survivors is the United States, which has funded scholarships for children to attend school. The Netherlands is also interested: eventually the number of beneficiaries could rise to 6,000.

192. The Special Representative would suggest that this growing interest extend towards legal reparation. The gacaca law foresees the establishment of such a fund, and even the statute of the International Criminal Tribunal provides for an indemnization fund for victims (even though it does not provide restitution for civil claims). The Special Representative would also suggest that a mechanism be set up to focus the efforts of donors on behalf of survivors, and that survivors be invited to thematic meetings on justice.

193. In this context, the Special Representative particularly commends the work of Avocats sans Frontières, whose lawyers not only defend accused génocidaires, but also plead the cases of victims. He also supports the kind of initiative described earlier, in which prisoners are released to perform community service. These acts of penance promote reconciliation as well as the physical well-being of the prisoners. One project in Gitarama, to be funded by the German aid service GTZ, will allow prisoners to work the land belonging to the widows of their victims.

XIV. ECONOMIC AND SOCIAL RIGHTS

Children

194. Rwanda's children suffered terribly under the genocide, and those who survived still bea the scars. But it is also time to shift the focus - to start looking beyond genocide and understanc the wider needs of Rwanda's children, many of which can be viewed in terms of protection and child rights.

195. Children need protection from HIV/AIDS. According to recent studies, between 10 and 11 per cent of the Rwandan population may be infected. This affects the rights of unborn children who risk being infected by their mothers. It also creates AIDS orphans, and leaves children as heads of households. According to UNICEF, AIDS orphans are often expelled from the house once their parents die, and the property taken over by close relatives. UNICEF would like to see a law recognizing a child's right to inherit property. UNICEF has also helped to draft a new law on foster care that provides protection and equal treatment for foster children, as well as opening the way to their eventual adoption.

196. In one pilot project, UNICEF has purchased the drug AZT and administered it to infecte pregnant women. The initial results suggest that the rate of transmission can be reduced by as much as 40 per cent. The project also shows that AZT need not just be a "rich man's drug" beyond the reach of poor people.

197. Violence against girls is one area of child protection that is at the forefront of public debate in Rwanda. Sexual violence against children is widespread, particularly in isolated communes, and in 1998 UNICEF helped 50 children testify before the National Assembly. The publicity shocked Rwandans, engaged women MPs, and even provoked public demonstrations. At the request of the Cabinet, the Assembly drafted a law which could be passed this year. This is a good illustration of the vitality of civil society in Rwanda, the capacity to lobby and the legislature's receptiveness to public opinion.

198. Street and working children are a familiar sight in Kigali. UNICEF studies suggest that as many as 80 per cent of them are not orphans, but have been sent out by their impoverished parents to beg. In theory, this could make their rehabilitation easier. But any work on behalf of street children has to battle with a highly negative public attitude. There is little concern for the violence and abuse suffered by the street children, and few protests when they are periodically rounded up by the police.

199. UNICEF has managed to reach 778 street children by working with NGOs. But each child requires individual attention and patience. UNICEF plans to advocate for a National Task Force on Street Children. The Special Representative fully supports this.

200. Education is another fundamental right which requires resources, and political will, if it i to be realized. The Government is committed to providing primary education for all Rwandan children by the year 2010, and with an enrolment rate of 75 per cent would seem to be well on the way. But there is a huge drop-out rate, especially for girls. Only one fifth complete the six grades of primary education. This, too must be another component of child protection.

201. These challenges underline the link between needs, protection and rights, and underscore the value of the Convention on the Rights of the Child. Rwanda ratified the Convention in 1991. Its first report, submitted in 1993, was not considered satisfactory by the Committee on the Rights of the Child and its second report is overdue by five years. UNICEF is urging the Government to undertake this important task, but it has slipped from the list of priorities. UNICEF would also like to see vigorous action taken on several new or partially drafted laws, covering foster care and juvenile justice.

202. The natural partner for such a campaign would be the National Programme for Children, in the Ministry of Social Affairs. But the Programme is severely under-resourced and the campaign needs new allies. The Special Representative's delegation is pleased that the National Human Rights Commission plans to meet with UNICEF and discuss areas of cooperation.

Villagization

203. Rwanda is in the middle of a great debate on land and settlement. The Special Representative is pleased that his advice has been sought on this important issue.

204. It is both understandable and prudent for the Government to be framing a national policy. Over the last five years, over 70 per cent of all Rwandans have left their homes. UNHCR has helped to build just under 100,000 houses, but according to the Government, 370,000 families still need housing.

205. This is linked to land. Few would dispute that pressure on land was one of the root causes of the war and genocide of 1990-1994, and Rwandan land has been progressively parcelled out through the generations, to the point where it is barely productive. Rwanda's population is expected to grow to 10 million by the year 2005 - putting even greater pressure on land.

206. The Government argues that regrouping Rwandans in village settlements will better facilitate their access to basic services like water, education and medical care, thereby securing basic human rights. It would also make it easier to organize security for the population, particularly in the north-west. The Government's policy of resettlement has emerged directly from the insurgency in the north-west, described earlier, where 600,000 displaced persons have been grouped into villages.

207. Out of these different elements has come the ambitious policy of collective resettlements known as imidugudu, or villagization. The scope and ambition of imidugudu has alarmed many important partners of Rwanda. On 12 July 1999 the EU Council of Ministers urged Rwanda to ensure "careful planning, prior impact studies and pilot projects in order to avoid villagization that brings about human rights violations". This reflects the two chief concerns of donors: first, that villagization may be coercive, and second, that it could further undermine Rwanda's agricultural productivity and food security.

208. There is some evidence on both counts. In December 1998, 41 per cent of those questioned in a government survey of Gisenyi and Ruhengeri said that they wanted to remain in their own homes instead of moving to villages. As for food security, a recent survey by the

Government and United Nations agencies suggests that the distance from fields is contributing to an alarming fall in food production. Only 53 per cent said they were able to farm their own land. The Special Representative is also reminded that compulsory settlement, tried elsewhere in Africa, has rarely succeeded.

209. The Special Representative visited three villages in the hope that first-hand experience would make it easier to frame the debate.

210. Karambi is the first of 19 villages planned for Gisenyi. All but two were selected by local leaders, indicating a considerable degree of local choice and participation. Karambi's 254 shelters/houses are situated on former farmland. The International Rescue Committee (IRC) has provided running water and built latrines for 200 houses, which are 10 minutes from the communal primary school and health centre. The settlers are only 500 metres from their fields, which can be easily reached. Most families are from the sector and so are living close to their original homes. The exceptions are 50 "old caseload" families who returned to Rwanda in 1994 but were forced to leave their temporary homes when the owners returned. There were no signs that their presence in Karambi was resented, and no hint of ethnic tensions.

211. There is no evident coercion in Karambi. Nor was there likely to be, given that the inhabitants were all displaced persons whose previous houses had been destroyed or who were otherwise extremely vulnerable. (No fewer than 136 heads of family were widows.) In the case of Karambi, the problem arises from a lack of resources rather than a lack of choice. All 254 houses are still made of temporary plastic sheeting, and only 5 are being built with brick. The health centre may be close - but it has no beds and almost no medicine. Karambi's settlers are regular visitors to the nutrition centre, because many of their infants are seriously underweight. Agricultural production is certainly feeble, but because settlers lack seeds and fertilizer, and most are single women.

212. The second village visited was Rutara in Kibungo prefecture. It comprises 100 houses built by UNDP on land that was previously occupied by just three houses, two of which were destroyed in the war. The third still stands. The population is mixed: 54 families are old caseload returnees, having no home. A school, market, and health centre are all close, as are fields. The main problem is water: there is a pump in the village but it is only available for settlers who make adobe bricks for latrines. Drinking water has to be purchased in the market, at a price. Coercion is not a problem in this village. All of the settlers opted to live here. In fact, the greatest problem is posed by 50 widows and other vulnerable families who wanted to live in the village for reasons of security, but could not qualify because they were unable to contribute to the construction of a house. These families have erected makeshift houses at the rear of the village which are plainly inadequate. One widow with four children said she had access to her family's land, but production had fallen because her husband was no longer there to farm.

213. The third site visited by the Special Representative's mission, Gihinga (Umutara prefecture), was the least satisfactory of the three. It comprises 150 houses that were constructed in 1997 by a consortium of donors. There is a serious lack of services. The nearest health centre is 5 kilometres away, the market is even further, and water supply is intermittent. There was also evidence of coercion: 20 of the 150 families had been told to destroy their original homes and

move into the new village. Asked whether they had moved voluntarily, settlers told the Special Representative's mission they had had no choice, because laws had to be obeyed.

214. The Special Representative wishes to stress that each village tells its own story. There can be no dispute that, often for security considerations, some coercion has occurred. In this connection, the Special Representative would note that as security improves in Rwanda, security seems increasingly less relevant as a justification for villages. He would also recall that the Guiding Principles on Internal Displacement require that those who are grouped together for purposes of security should be allowed to return home when the emergency is over. The Special Representative was relieved to hear from the Adviser to the President that no Rwandans will be forced into villages against their will. In recent weeks, this has begun to look more and more like formal government policy: ministers have warned that coercion will not be tolerated, and have made this clear at meetings with donors as well.

215. It is also clear that many settlers have happily taken up the offer of a new house and land, and it is the Special Representative's firm belief that if settlers were assured of proper services in advance, they would be clamouring for admission to villages. He therefore very much encourages the Government to establish a joint programme with its partners to improve services in existing villages. With respect to new villages, pilot sites could be established throughout the country, with the location left to the newly elected development councils. Services should be installed before settlers are sought. Findings of technical studies should be fully exploited for the improvement or establishment of such services and projects. Such a policy would certainly lay a firm foundation for a national policy of integrated rural development, which is essential for the well-being of the country.

216. Finally, as with all the issues reviewed in this year's report, the Special Representative is convinced that villagization needs more public discussion. With this in mind, he commends the Rwandan Association for the Defence of Human Rights and Freedoms (ADL) for its decision to study human rights and imidugudu, and the Government of the Netherlands for providing financial support.

XV. CONCLUSIONS AND RECOMMENDATIONS

217. The Special Representative wishes to conclude his report to the Commission this year on a note of optimism, by emphasizing the opportunities that face Rwanda and its partners in the donor community.

Government of Rwanda

218. The Government is to be congratulated for encouraging the development of independent human rights institutions. It is the Special Representative's firm view that this will help to resolve some of the dilemmas identified in this report.

219. The broad themes in this year's report are detention, justice and reconciliation. The Special Representative is convinced that the time is ripe for a major breakthrough on all three fronts, and he commends the efforts by the Ministry of the Interior to improve conditions and administration in prisons.

220. The Special Representative would like to recommend, in particular, the following measures:

(a) The Interior Ministry should provide a budget for food and access to medical facilities in cachots;

(b) The authorities should continue to prepare public opinion for more releases from prison and treat the following categories of persons as a priority: children who are without files or who are confirmed to be innocent; pregnant women; the chronically ill; and persons over 70 years of age;

(c) Every effort should be made to separate male and female prisoners and to separate adults from minors. In fact, as according to international standards, minors should not be imprisoned, they should be moved to the Gitagata reformatory centre (which should, if necessary, be expanded);

(d) The Ministry of the Interior should disseminate the new prison regulations and publish a regular statistical bulletin on prisons. This would require support from donors;

(e) The Ministry of Justice should undertake a review of the failure of the Basic Law to accelerate the trial of persons who confess to genocide;

(f) Concerning villagization (imidugudu), the Special Representative welcomes the assurance that new villages will be constructed with the full participation of voluntary inhabitants. This policy should be applied in the north-west, as the emergency recedes. The Government could select a number of sites to serve as models for an expanded national programme to utilize land and other resources. These could be presented to the donor community for funding;

(g) The Government should forestall international criticism of local defence forces (LDF) by offering a clear explanation of their role, their training, and the chain of command. This could be undertaken in partnership with the National Human Rights Commission;

(h) The Special Representative supports and applauds the boldness of the gacaca proposal. Launching gacaca trials, at first in a limited number of locations, would help to assess the practical difficulties and reassure Rwandans as well as their international partners;

(i) Every effort should be made to enhance the independence and autonomy of NGOs in the new draft legislation being discussed at present;

(j) Concerning information, the Government should consider licensing private radio stations and permitting the operation of private Internet service providers. This will be a positive step in increasing the free circulation of information;

(k) The Government should increase the budget for National Assembly committees, including the committee on human rights.

Rwandan human rights groups

221. The Special Representative commends Rwanda's independent human rights groups, which are contributing to Rwanda's transition to a post-genocide society. He urges them to focus on strengthening their management and monitoring, and to work together wherever possible on sensitive assignments. The Special Representative predicts a boost in membership and enhanced credibility for these groups. He will follow their progress with interest.

222. The Special Representative would also pay tribute to other sectors of civil society, particularly women's associations, labour unions, students, and the seven Batwa organizations. In different ways, all are demanding to be taken seriously and helping to lay the foundation for a democratic society. The increasing interest by religious groups, especially the Catholic Church, to participate in debates on reconciliation is a welcome development.

The National Human Rights Commission (NHRC)

223. The Special Representative is deeply gratified that the Commission is now operational, able to take its place at the forefront of Rwanda's human rights institutions. He particularly supports the Commission's efforts to identify priorities and present a realistic and streamlined workplan that can attract additional funding, while at the same time addressing the Commission's own internal administrative needs.

224. Following the recent public round table of October 1999 and subsequent discussions with international and national partners in Rwanda, many specific recommendations were suggested to the NHRC. The Special Representative is pleased to report that, provided adequate resources are available, the NHRC will spare no efforts to meet the objectives described below. In order to attain these objectives, the NHRC should:

(a) Take advantage of the efforts of independent human rights groups and provide complementarity which makes use of its own unique assets. These include the experience of its individual commissioners, its backing from parliament, and its access to Government;

(b) Carefully choose investigations, so as to contribute to an overall NHRC workplan. They should aim to respond to complaints and/or petitions, and shed light on controversial or sensitive subjects that have a clear human rights dimension. These could include representative cases of disappearances and arbitrary detention; social and economic rights (property and land), sexual violence against children and women; the right to sexual preference; villagization; and local defence forces;

(c) Work closely with the National Unity and Reconciliation Commission (NURC) to ensure complementary projects and avoid duplication;

(d) Work with Rwandan human rights groups to monitor gacaca trials as they pertain to human rights, the rights of defendants and those of survivors;

(e) Promote and disseminate human rights, with special attention to isolated populations; disseminate the report of the Special Representative;

(f) Develop new partnerships - with the Chief Military Prosecutor to develop human rights training for army officers; with the Ministry of the Interior, to disseminate the new prison regulations and develop human rights guidelines for prison discipline; and with the Rwandan telecommunications body Rwandatel, to explore possibilities for liberalizing the Internet and the airwaves.

(g) Work with UNICEF to advocate for a comprehensive programme for the protection of children that would include coordinating the preparation of Rwanda's report to the Committee on the Rights of the Child and lobbying for laws on foster care, child labour, sexual violence against children, juvenile justice, inheritance;

(h) Press for improvements in the situation created by the suspension, for persons suspected of genocide, of the basic safeguards provided under the Rwandan Penal Code, which was introduced in 1996, extended in 1998 and extended again in December 1999 for another 18 months; press for a cancellation of the suspension;

(i) Organize workshops with national institutions and organizations representing all the sectors of civil society in Rwanda, in order to remain in close contact with the needs and concerns of civil society in Rwanda;

(j) Organize, in particular, a workshop with the Association of Rwandan Journalists to review the new press law and develop a press code of conduct;

(k) Serve as an intermediary between Government and human rights NGOs in discussions on the new draft law on NGO registration.

The international community - international NGOs

225. The Special Representative wishes to express his deep appreciation to the international non-governmental organizations that have supported Rwanda since 1994. Many have been mentioned by name in this report. They can take comfort from the fact that their efforts are definitely bearing fruit. This is evident from the solid improvements in the justice system, in prison conditions, and in the growing confidence of Rwandan civil society.

226. International NGOs have unique assets in the form of international membership, links to donors, access to the United Nations system, and advocacy skills. These can be exceptionally valuable to Rwandan counterparts. The Special Representative can also imagine many new interventions. For example, international women's organizations might assist the victims of rape who will be called upon to testify at the gacaca trials. Working with Rwandan women's groups, they might also offer their expertise to the Ministry of Justice and Chief Prosecutor, who will shortly take on a greatly increased number of cases of sexual violence. The Special Representative will use his good offices to identify potential new partnerships (for example, between the Inter-parliamentary Union and the Rwandan National Assembly).

227. The Special Representative hopes that more international NGOs will find it possible to invest in a full-time presence in Rwanda. The Special Representative applauds, in this

connection, Human Rights Watch and Africa Rights, two organizations which have won the confidence of Rwandans and also increased their own credibility by establishing offices in the country.

228. The Special Representative calls upon international NGOs to pay particular attention to regional initiatives by civil society in the Great Lakes area. They could also focus on the human rights aspects of development aid. The Special Representative is assured that multilateral economic aid is more responsive today to human rights considerations than it was before the 1994 genocide. International human rights groups should hold development banks and donors to this pledge.

Bilateral donors

229. The contribution of donor Governments to Rwanda's transition is essential, and the Special Representative is particularly grateful to those donors that take the time to target assistance to small human rights projects. These require patience and commitment from individuals. At the same time, human rights assistance could be greatly improved.

230. The Special Representative urges Rwanda's donor partners to reinstate issues relating to justice and detention to the top of their lending priorities. This will require political support from capitals. The Special Representative urges donors to convene, in consultation with the Rwandan authorities, a meeting to draw up a comprehensive package of measures in support of justice reforms, improved prison administration and gacaca trials that would reflect the interdependent nature of these components. Specific tasks could then be allocated to donors, depending on their own lending criteria.

231. Such a package of support should be developed in Rwanda with the Government and civil society, and on the basis of mutually agreed benchmarks. In this regard the Special Representative would commend the memorandum of understanding that was signed on 12 April 1999 by the Secretary of State for International Development of the United Kingdom and the Vice-President of Rwanda. It contains clear goals, developed through partnership, and could well serve as a good basis for similar understandings.

232. Among the components of a package of support could be:

(a) Donors should develop practical links with the Rwandan Ministry of the Interior and support the Ministry's efforts to expand the Gishari police training centre to accommodate prison guards. They should support the work of NGO projects that are linked to prison releases in communes and pay regular visits to detention centres;

(b) Donors should support the creation of a liaison office on gacaca under the umbrella of an NGO, to serve as a link with the Government, civil society and the Supreme Court; support community service in a selected number of communes; support monitoring of gacaca trials by Rwandan civil society;

(c) Donors should improve the effectiveness of their assistance to Rwandan human rights groups by extending the duration of projects and building in more costs for overheads and salaries. European Union aid should also be speeded up;

(d) Donors should respond to the suggestion contained in the report of the Independent Inquiry of 15 December 1999 and establish a fund to provide legal restitution for survivors in genocide cases; they should also designate an appropriate mechanism in Kigali for survivors' groups;

(e) Donors should continue the constructive dialogue already begun with the Rwandan National Human Rights Commission and assist it to conduct an inventory of human rights initiatives, with a view to identifying gaps, ensure that the Commission is provided with technical assistance and adequate resources;

(f) Donors should provide support for the National Assembly's human rights committee;

(g) Donors should respond to the efforts of the Government to ensure the consensual nature of imidugudu by supporting a number of pilot villages.

The United Nations system

233. The Special Representative would like to underline again that the United Nations has a crucial role to play in Rwanda's transition, and that the will exists on both sides to repair what has been a difficult relationship. This will require understanding on each side of the pressures and constraints that face the other. The Special Representative would urge that support be very specific, as suggested by the Independent Inquiry.

The United Nations High Commissioner for Human Rights

234. The Special Representative commends the High Commissioner for Human Rights for her readiness to build a new relationship with Rwanda. Both sides are feeling their way, and the Special Representative is delighted to be able to help and advise. He also hopes that the High Commissioner will be able to expand her support for the National Human Rights Commission and the National Unity and Reconciliation Commission in Rwanda. Specific proposals are under review by her Office in Geneva. The High Commissioner also recently dispatched to Rwanda a delegation headed by her coordinator for African programmes on a needs-assessment mission. Her continued cooperation with the Special Representative was illustrated by the holding of the round table last October.

The United Nations Development Programme (UNDP)

235. UNDP plays a central role in the coordination, funding and implementation of United Nations human rights technical assistance in Rwanda since the withdrawal of the United Nations field operation. The improved security in Rwanda, the growing confidence of the Government and the strengthening of civil society provide UNDP with a major opportunity, which calls for strengthening and upgrading UNDP's human rights capacity in Rwanda.

236. The Special Representative hopes that this opportunity will be understood and exploited. He applauded the initiative by UNDP to establish a Justice and Human Rights Unit in Kigali, but he is concerned that this unit remains severely underfunded and understaffed. Among the tasks suggested for this unit are:

(a) To prepare and circulate a written summary of donor initiatives undertaken in the justice area so as to avoid duplication between projects; to resume regular thematic meetings on justice and detention;

(b) To invite officials from the Ministry of the Interior (prisons and police) to human rights coordination meetings;

(c) To meet regularly with all Rwandan human rights NGOs and extend such meetings to women's associations, survivors, press and media; to encourage studies and monitoring of economic and social rights, with special emphasis given to land and property;

(d) To work with the National Human Rights Commission and the National Unity and Reconciliation Commission. UNDP has allocated $800,000 for several Rwandan institutions including the two national commissions, and proposes to recruit an international technical adviser for the NHRC for an initial four-month period. This should be speedily expedited;

(e) To disseminate international human rights instruments (including the Declaration on Human Rights Defenders), the Special Representative's report, the UNDP 1999 Human Development Report on Rwanda, with a view to discussing its human rights implications.

The Committee on the Rights of the Child

237. The Committee should formally request the Government of Rwanda to submit its follow-up report on the Convention, which is now several years late. Such a request would stimulate national debate around a comprehensive programme of child protection.

The International Criminal Tribunal

238. The Special Representative hopes that the Tribunal can move quickly to offer technical advice to Rwanda's overburdened justice system in areas such as sexual violence, where the Tribunal has unequalled expertise.

239. The Special Representative would also like to reiterate his strong appeal to the international community to cooperate fully with the Tribunal regarding suspected génocidaires, thereby also strengthening among the Rwandan society the sense that impunity is being removed and coexistence made possible.

Peace, security, economic development and human rights

240. It is, of course, evident that the fundamental requirements of any human society are closely interlinked. This is particularly the case in the Great Lakes region of Africa. If there is no respect for human rights, how can economic development, peace and security prevail in the

region? And if there is no peace and security, how can human rights and economic developme prevail? This is why it is of the utmost importance, for Rwanda and for all the countries in the Great Lakes region, that a comprehensive regional solution is found to the present conflicts affecting them.

241. The Special Representative appeals for full respect for the Lusaka peace agreements. H appeals to all the countries in the region, to the Organization of African Unity and to the United Nations to use all possible means to ensure that a lasting and comprehensive peace is agreed upon by all the affected countries, and that all the populations in the area are provided with durable peace and security and with appropriate means to ensure their economic development and prosperity. This is the only viable method to obtain a sustainable culture and respect of human rights in the area.

Notes

[1] The mandate of the Special Representative, contained in resolution 1997/66 of 16 April 1997 is "to make recommendations on how to improve the human rights situation in Rwanda, to facilitate the creation and effective functioning of an independent national human rights commission [and] to make recommendations on situations in which technical assistance to the Government of Rwanda in the field of human rights may be appropriate" (para. 20).

[2] See A/53/402, paras. 12-19.

[3] A government study of displaced persons in June also found that only 53 per cent of the population in the north-west had access to their own land.

[4] Rwanda is organized at four administrative levels. In ascending order these are the cell, the sector, the commune and the prefecture. At present the country's administrative structure comprises 9,264 cells, 1,064 sectors, 154 communes and 12 prefectures. There are 9,264 cells and 1,064 sectors in the country.

[5] There are in addition, at the sector level, Sectoral Councils (Conseil de Secteur) composed of representatives of each cell in the sector as well as the representatives of the sector's Executive Committee. In addition, two wise persons, two women and two youths are members of the Sectoral Council. Their main responsibilities are to approve or modify decisions taken at the lower levels and take appropriate action to find solutions to current problems. Decisions at all levels are taken by consensus.

[6] This committee of the National Assembly should not be confused with the newly established national Human Rights Commission.

[7] Articles 2, 3 and 4 of the law stipulate that: "the Commission is independent" (art. 2), "the Commission has as an objective to investigate and follow up on human rights violations committed by anyone on the Rwandan territory, especially State organs and individuals under the cover of the State organs as well as any national organization working in Rwanda" (art. 3), "in particular, the functions of the Commission are: to sensitize and train the Rwandese population in matters of human rights; on informing relevant authorities to eventually initiate judicial proceedings in case of human rights violations by anyone" (art. 4).

[8] The law specifies that: the Chairman of the Commission would hold the rank of Minister; the other members would hold the rank of Secretary-General; and that in the exercise of their duties they are subject only to the jurisdiction of the Supreme Court. This means, according to the President of the National Assembly, that they will enjoy immunity equivalent to that of members of parliament.